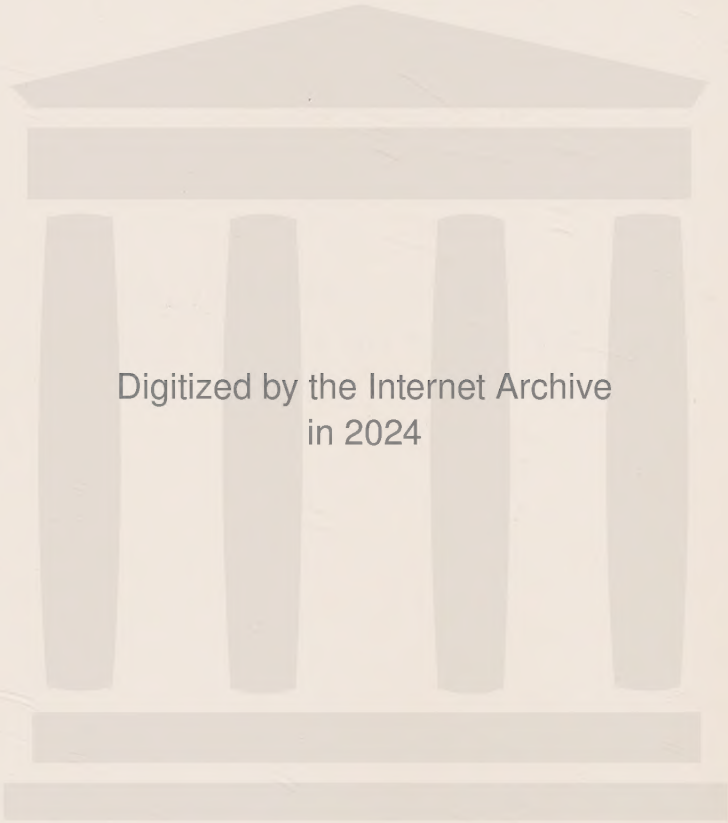
A PRACTICAL COMMENTARY ON THE CODE OF CANON LAW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A PRACTICAL COMMENTARY ON THE CODE OF CANON LAW

BY

REV. STANISLAUS WOYWOD, O.F.M., LL.B.

WITH A PREFACE BY

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A PRACTICAL COMMENTARY ON THE CODE OF CANON LAW

The Third Book OF THINGS

PART TWO

OF SACRED PLACES AND SEASONS

Section I

OF SACRED PLACES

1192. Sacred places are those which are set apart for divine worship or for the burial of the faithful by consecration or blessing as prescribed by the approved liturgical books (**Canon 1154**).

The consecration of a place, even though it belongs to the regulars (i.e., religious organizations of men with solemn vows), pertains to the Ordinary of the territory in which such place is situated, provided the Ordinary has the episcopal character. The vicar-general, however, needs a special mandate to entitle him to consecrate a place. Cardinals have the right to consecrate the church of their title and the altars in that church. The Ordinary of a certain territory, though he is not a consecrated bishop, can give permission to any bishop of his own rite to perform consecrations in his territory (**Canon 1155**).

The consecration or the blessing of a place requires both the powers of orders and of jurisdiction. Essentially there is no dif-

ference between the consecration and the blessing of a place, but the consecration is a more solemn dedication of a place for divine worship or for Christian burial, and Canon Law attributes greater consequences to the consecration than to the blessing. In reference to the jurisdiction over the place which is to be consecrated, the Code rules that the local Ordinary is the only one who has the right to consecrate sacred places, even churches and cemeteries belonging to exempt religious organizations. If the local Ordinary is not a consecrated bishop (as happens quite frequently in the case of Prefects and Vicars Apostolic), he has no power to consecrate places unless it be given to him by indult of the Holy See, but nobody else can consecrate a place in his territory (even a church or cemetery belonging to exempt religious) without his consent, as Canon 1157 states explicitly.

1193. The faculties given to the bishops in the United States empower them to delegate priests for the consecration of altars and chalices, but do not grant power to delegate priests for the consecration of a place. Formerly it was debated among theologians whether a priest authorized by his local Ordinary could validly consecrate a place or an object (e.g., altars and chalices). At present there can be no controversy on this point, for Canon 1147 states explicitly that nobody without the episcopal character can validly perform consecrations, unless this is permitted to him either by law or by indult of the Holy See.[1]

1194. The right to bless a sacred place that belongs to the secular clergy or to a non-exempt religious or to an exempt laical congregation, is vested in the local Ordinary of the territory where the place is situated; if the place belongs to an exempt clerical religious body, the major superior has the right to bless it. Both the Ordinary of the territory and the major superior of the religious community may delegate a priest for the blessing of such places (**Canon 1156**). Notwithstanding any privilege to the contrary, nobody can consecrate or bless a place without the consent of the Ordinary (**Canon 1157**).

1195. The consecration of a place is exclusively reserved to the local Ordinary within his territory of jurisdiction, even the consecration of churches and cemeteries of exempt religious; the blessing of places is reserved to the local Ordinary with the exception of the blessing of places belonging to exempt religious,

[1] Coronata, "De locis et temp. sacris," n. 5.

and in these places of exempt religious the blessing is reserved to the major religious superior. Nobody can consecrate or bless places without the consent of the ecclesiastical authority to which such consecration or blessing is reserved. In exempt religious organizations nobody can bless a place belonging to them without the consent of the major superior of the religious; for this reason the Code uses the term Ordinary, not *local* Ordinary, so as to cover all cases. No privilege against this right of the respective Ordinary is recognized by the Code. If commentators on the Code say that by Canon 1157 no privileges are revoked, this is true in so far as direct revocation is concerned, but indirectly a privilege which (for instance) a religious order obtained to have its churches or cemeteries consecrated by any Catholic bishop without the necessity of obtaining the consent of the local Ordinary, would be revoked by the statement of the Code that in this particular matter no contrary privilege can be invoked against the right of the respective Ordinary.

Record and Proof of Consecration or Blessing of a Place

1196. A document shall be drawn up attesting to the fact of the consecration or blessing of a place; one copy shall be kept in the episcopal Curia, and another in the archives of the respective church (**Canon 1158**). The consecration or blessing of a place is proved sufficiently by even one absolutely trustworthy witness, provided nobody's rights are injured thereby. If there is legal proof of the consecration or blessing of a place, neither can be repeated; in doubtful cases, they may be given *ad cautelam* (**Canon 1159**).

A properly authenticated document of the consecration or blessing of a church or cemetery is considered a public ecclesiastical document which constitutes full proof of the fact which it attests (cfr. Canons 1813 and 1816). In controversies about conflicting rights or claims, and likewise in criminal cases, one witness does not fully prove any fact, unless it be a witness who testifies as to the acts done by him in virtue of the office he holds or held (cfr. Canon 1791). Outside of judicial proceedings Canon Law in some instances accepts one witness as proof of a

fact—e.g., in the present matter, in proving Baptism (cfr. Canon 779), Confirmation (cfr. Canon 800)—but, whenever the testimony of one witness is accepted as proof of a fact, the Code takes care to state that it must be a case in which no damage or injury is done to a third party.

Sacred Places Are Exclusively under the Jurisdiction of the Church

1197. Sacred places are exempt from the jurisdiction of the civil authority, and in them the legitimate ecclesiastical authority freely exercises its jurisdiction (**Canon 1160**).

It is the teaching of the Catholic Church that by the law of Christ there are two independent powers, the secular and the spiritual or ecclesiastical. Each owes its existence and its authority to the divine institution, and each has its own field of action and its own peculiar rights and duties according to the purpose assigned to each by God. One power may not infringe on the rights of the other, but according to God's plan they should both assist each other and work in unison and harmony for the common welfare of society.

In countries like the United States, no Church (neither the Catholic nor any other) is admitted as such to have any rights as a divinely instituted organization charged with the care of the spiritual aspect of man's nature. There is not—and by the Constitution of the United States there cannot be—any official recognition of any religious denomination as an organization endowed with powers of its own. Nevertheless, the Catholic Church and the various other Christian denominations enjoy great liberty, and the law gives them many privileges to facilitate their work for the spiritual training and Christian education of their respective adherents, because Christian ideals and Christian life have been recognized, by the Federal government as well as by the individual state legislatures, as most beneficial to the general welfare of the nation. For this reason the Church in the United States has been able to live and work generally unhampered by the civil power, and, if there has been some interference, it has not been frequent.

TITLE IX

OF CHURCHES

1198. By the term "church" is meant a sacred edifice dedicated to divine worship, especially with a view to enabling all the faithful to practise public worship (**Canon 1161**).

The definition of the term "church" is given here mainly to distinguish it from other sacred places used for divine worship. A church, properly so called, is open to all Catholics, and is destined for the public practice of divine worship. Other chapels, oratories, and houses of prayer are either not open to all Catholics (but only to certain communities, confraternities, etc.), or, if they are open to all, they are not officially appointed for the public practice of divine worship, but rather for private devotion.

Who Has the Right to Build a Church?

1199. No church shall be erected without the explicit written consent of the local Ordinary. The vicar-general cannot give this consent without a special mandate, nor shall the Ordinary give it unless he prudently foresees that the necessary means for the building and maintenance of the new church, for the support of the necessary ministers, and for defraying other costs of the divine worship, will not be wanting.

In order that the new church may not, without proportionate spiritual benefit to the faithful, injure the interests of churches already established, the Ordinary, before giving his consent for the building of a new church, should hear the rectors of such neighboring churches that may be concerned, the law of Canon 1676 being also observed. (That Canon gives to parties who think themselves injured by the erection of a new church, or other new ecclesiastical undertaking, the right to object, and from the moment protest is made operations must come to a standstill until a decision has been reached by the ecclesiastical court.)

Religious organizations also, though they have obtained consent from the local Ordinary for the erection of a new house in the diocese or in a city, must obtain permission from the local Ordinary before they build a church or a public oratory in a certain and definite place (**Canon 1162**).

1200. The rule of the Code that no church may be erected

without the consent of the local Ordinary is very ancient. The Council of Chalcedon (451) ordained that nobody shall establish a monastery or a house of prayer (*oratorii domum*) without the consent of the bishop of the place.[2] Popes Innocent III and Alexander IV forbade exempt persons to erect without permission of the bishop churches and oratories outside their exempt territory.[3]

The Code makes the rule about the consent of the Ordinary of the place so absolute that it requires this consent even though a religious organization has obtained permission to establish a house. Canon 497 also refers to this matter; while it states that the permission given to clerical religious organizations to establish a house carries with it the right to have a church or public oratory adjoining such a house, it demands that the rule of Canon 1162 be observed concerning the approval of the local bishop.[4]

Blessing of the Corner-stone of Churches

1201. The blessing and laying of the corner-stone of a church belongs either to the local Ordinary or the major religious superior, according to the rule of Canon 1156 determining the right to bless a church (**Canon 1163**).

According to Canon 1156 the local Ordinary has the right to bless all churches within his territory except the churches of exempt clerical organizations of religious.

Architecture of Churches

1202. The Ordinaries should take care to have the churches built or restored according to approved Christian traditions of ecclesiastical architecture, and in conformity with the laws of sacred art, consulting for this purpose, if necessary, experts in ecclesiastical architecture. In a church there must be no door or window opening into a house of lay persons. The space below the floor or above the ceiling of the church, if there be any, shall not be used for purely profane purposes (**Canon 1164**).

The Ordinaries—namely the bishop in charge of the diocese and other local Ordinaries, and the major religious superiors of

[2] *Decretum Gratiani*, c. 10, C. XVIII, qu. 2.

[3] *Decret. Greg. IX*, c. 14, *De Privil.*, lib. V, tit. 33; *Liber Sextus*, c. 4, *De Privil.*, lib. V, tit. 7.

[4] Schäfer, "Ordensrecht," 49.

exempt clerical organizations of religious—are here commanded to see that the churches are built in such a style and shape as to be in harmony with ecclesiastical architecture and serve to elevate the minds of those who use the church for divine worship. The very highest human art and the best material should, in so far as possible, be requisitioned for the House of God. Frequently, however, financial circumstances make it impossible to erect a building really worthy of the high purpose for which a church is destined. Yet, a skilful architect can at least put up a neat, attractive and serviceable church at moderate cost. Ordinaries certainly have the right and the duty to inspect and carefully study the plans of the architect before they are accepted.

1203. Rooms in the basement of a church and space above the ceiling of a church may not be used for purely profane purposes. It is wrong to have an entertainment hall in the basement or over the church, for this shows lack of respect for the presence of our Lord and for the place of divine worship. In many places in the United States a so-called combination building is erected when a parish is first established. On the first floor is the church, on the second the school, and on the third floor in some instances the living quarters of the Sisters teaching in the school; in other instances, the third floor is an auditorium serving for assemblies and for entertainments. It seems there is nothing against the law of the Church in having the floor above or below the church occupied by the parochial school, for that is not a purely profane purpose. As to sleeping quarters above the church, the Sacred Congregation of Rites was asked whether the clerics of a certain seminary might live day and night in the rooms built over the side aisle of the cathedral church, and answered that this is absolutely forbidden.[5]

Church Must Be Blessed or Consecrated before It Is Used for Divine Worship

1204. Divine worship cannot be held in a new church before it has been dedicated to divine worship by solemn consecration, or at least by blessing. If it can be prudently foreseen that the church will eventually be converted to profane purposes, the Ordinary shall not give his consent for building the same, or, if

[5] May 11, 1641; *Decreta Authentica*, n. 765. No memorial tablets of the deceased to be placed in churches, cfr. App. III, 50, b.

it has already been built, shall neither consecrate nor bless it. Cathedral churches should be dedicated by solemn consecration and also, in so far as possible, collegiate, conventual and parochial churches. A church built of wood, or iron or other metal, may be blessed, but it cannot be consecrated. An altar may be consecrated without consecrating the church, but in the consecration of a church at least the main altar must be consecrated, or, if the main altar is already consecrated, another altar (**Canon 1165**).

The law that Holy Mass and other divine services may not be celebrated in a new church until it has been dedicated to divine worship by competent ecclesiastical authority is an ancient rule of Canon Law.[6] Though the several canons ascribed by the Decree of Gratian to early Popes and Councils are apocryphal, nevertheless canonists agree that the law forbidding divine worship in churches prior to their solemn dedication was introduced into the discipline of the Church by ancient custom.[7] The law does not absolutely insist on the consecration of churches, but is satisfied with the solemn blessing. Churches built of wood, iron, or other metal may not be consecrated but only blessed. The churches to be consecrated must be built either of stone, brick, or cement. About the cement there was formerly some doubt, but the Sacred Congregation of Rites has answered that such a church may be consecrated provided the twelve places on the walls where the crosses are anointed and the door posts be of stone.[8]

Days on Which the Consecration May Be Held

1205. Though the consecration of churches may take place on any day, nevertheless Sundays and holydays of obligation are more becoming. The consecrating bishop and those who ask for the consecration must keep the fast on the day previous to the consecration. When a church or an altar is consecrated, the officiating bishop, though he has no jurisdiction in the territory, can give an indulgence of one year to those who visit the church or the altar on the very day of the consecration, and on the anniversary fifty days if a bishop consecrates, one hundred days if an

[6] Pope Bened. XIV, "De Sacros. Missæ Sacrificio," lib. III, cap. 6, n. 1.
[7] *Decretum Gratiani*, cc. 1, 2, 11, 14, 15, D. I, *De Consecr.*
[8] *Decreta Auth.* (Nov. 2, 1909), n. 4240.

archbishop, and two hundred days if a Cardinal performs the ceremony (**Canon 1166**).

The Sacred Congregation of Rites declared that the fast on the day preceding the consecration of a church is of strict obligation for those who ask that the Church be consecrated.[9] Gasparri states that the doctors explaining this obligation hold that it applies to all the clergy belonging to that church, but not to any of the lay persons.[10]

Feast of the Dedication of a Church

1206. The feast of the consecration of a church is to be kept annually according to the liturgical laws (**Canon 1167**).

On the day of the consecration the clerics attached to the particular church must say the Office of the Dedication of the Church, beginning that Office with Tierce,[11] while Matins, Lauds and Prime are to be said from the Office of the Day. If altars only are consecrated, no office of the dedication is to be said. The priests (and other clerics in major orders) attached to a church that has been consecrated must recite the Office of the Dedication on the anniversary of the consecration (instead of the Office of the Calendar). About this anniversary the Sacred Congregation has ruled that, if it has been the custom in a diocese or institute to keep the dedication of all consecrated churches on one day, the bishop, after consultation with the Cathedral Chapter (or diocesan consultors), may appoint that day; but, if, in a diocese the clergy of each consecrated church have kept the anniversary of such church, this custom should be continued. The anniversary of the dedication of the cathedral church may not be celebrated together with the dedication of all the churches of the diocese; if the true date of the dedication is unknown, the bishop after consulting the Cathedral Chapter (or diocesan consultors) shall appoint a day once for all. If a diocese, order, or congregation observes one day as the anniversary of all consecrated churches, only the clergy attached to consecrated churches say the Office of the Dedication.[12] The revised rubrics provide that the anniversary of the consecration of the cathedral

[9] *Decreta Auth.* (July 29, 1780), n. 2519.
[10] *De SS. Eucharistia,* I, n. 163.
[11] *Decreta Auth.* (Dec. 7, 1844), n. 2868.
[12] October 28, 1913; *Acta Ap. Sedis*, V, 458.

church is to be kept as a double of the first class with an octave by the secular clergy and also by those regulars who use the diocesan calendar; the regulars in the diocese who have a proper calendar must keep the anniversary as a double of the first class but without an octave.

Title of Churches

1207. Each church which is either consecrated or blessed shall have its title, which it is forbidden to change after the dedication of the church has been performed. The titular feast of the church is to be celebrated annually according to the laws of the sacred liturgy. Churches cannot be dedicated to *beatified* persons without an indult of the Holy See (**Canon 1168**).

Churches are to be named only after saints or after the sacred mysteries of the Catholic faith. The nomination is done in the act of the solemn blessing or consecration. The bishop may not name a church after a saint or a mystery which is not contained in the Roman Martyrology or the approved supplement of the diocese.[13] If the title of a church is a saint who has no office in the Breviary, the office is taken from the *Commune Sanctorum*.[14] If the title has the names of two saints and they occur on different days in the liturgical calendar, the feast of each saint has to be kept on his or her respective day.[15] If a church is named merely after the Blessed Virgin, without the addition of a particular mystery or title, the titular feast is to be kept on the Assumption of the Blessed Virgin, August 15.[16]

The feast of the title of the church is to be kept by the clergy legitimately attached to the particular church on the day on which the feast or mystery occurs in the calendar. This rule applies to all churches which have been either consecrated or blessed. The rank of the titular feast is a double of the first class with an octave. The title of the cathedral church is to be celebrated as a double of the first class with an octave by the entire clergy (secular and regular) residing in the diocese, but the regulars who have a calendar of their own keep the title without an octave.

[13] *Decreta Authentica S. R. C.*, n. 3876.
[14] *Decreta Authentica S. R. C.*, n. 3661.
[15] *Decreta Authentica S. R. C.*, n. 3637.
[16] *Decreta Authentica S. R. C.*, n. 2529.

Church Bells

1208. It is appropriate that each church should have bells by means of which the faithful are invited to divine services and other religious acts. The church bells should be either consecrated or blessed according to the rites of the approved liturgical books. Their use is exclusively subject to the ecclesiastical authorities. Without prejudice to conditions stipulated by the donor of a church bell, which conditions are valid only if approved by the Ordinary, the blessed bells may not be rung for merely profane purposes, except in a case of necessity, or with the permission of the Ordinary, or in obedience to legitimate custom. With reference to the consecration or the blessing of church bells, the rules laid down in Canons 1155 and 1156 shall be followed (**Canon 1169**).

The right of consecrating church bells of any church within his diocese belongs to the local Ordinary, as Canon 1155 states about the consecration of churches; the right of blessing church bells belongs likewise to the local Ordinary, with the exception of the bells in churches of exempt clerical organizations of religious in which the blessing is reserved to the major superior (Canon 1156). The prayers and ceremonies for the consecration of church bells are found in the *Pontificale Romanum*. When a priest by delegation of the bishop, or a major religious superior by the power given him in Canon 1156 blesses church bells, he must employ the prayers and ceremonies as prescribed by Decree of the Sacred Congregation of Rites, January 22, 1908.[17]

A Decree of Pope John XXII forbade the Mendicant Religious Orders to have more than one bell in their church towers.[18] The Code makes no restriction, but states generally that it is desirable that each church should have bells. There is also an ancient law that in the episcopal city no other church, secular or regular, may ring the bells on Holy Saturday until the bells of the cathedral church are rung.[19]

[17] *Acta S. Sedis*, XLI, 118.
[18] *Extravagantes Communes*, c. unicum, *De Officio Custodis*, tit. 5.
[19] Sacred Congregation of Rites, November 14, 1615; *Decreta Auth.*, n. 337.

Loss of Consecration

1209. A church does not lose its consecration or blessing unless it is totally destroyed, or the greater part of the walls collapses, or it has been reduced to profane purposes by authority of the local Ordinary, as provided by Canon 1187 (**Canon 1170**).

Various cases as to additions made to a church, renovation of the inside of the church (even by taking off all the plaster of the walls), and destruction of the roof by fire or other causes, have been decided by the Sacred Congregation of Rites. The Code summarizes these decisions in a few words. Additions to a church do not cause loss of the consecration or blessing unless the addition is larger than the original church, or transforms the entire church beyond recognition, for in these cases it would be considered a new building.

Religious Services in Consecrated or Blessed Churches

1210. In sacred edifices which have been legitimately dedicated, all ecclesiastical functions may be performed which do not prejudice the rights of parochial churches and rights acquired by privilege or by legitimate custom. The Ordinary may for a just cause fix the hours for the sacred functions—not, however, in the case of the churches of exempt regulars, except as provided by Canon 609 (**Canon 1171**). Canon 609 gives the Ordinary the right to judge whether the services in the churches of the regulars interfere with the people's attendance at the explanation of the Gospel and catechetical instruction in the parish church (supposing that the regular church does not serve also as a parish church), and, if the bishop believes that the services at the monastery church so interfere, he may forbid the regulars to have public services in their church during those hours.

The rubrics of the sacred liturgy indicate that some of the sacred rites and functions are reserved to parochial churches and to the pastor of these churches. Canon 462 specifically enumerates these functions (cfr. Volume I, n. 338).

Pollution of Churches

1211. A church is polluted only by the crimes here enumerated, if they are certain, notorious, and committed within the

church itself: (1) homicide; (2) a sinful and serious shedding of blood; (3) godless and disgraceful uses to which the church has been converted; (4) burial of an infidel or of a person excommunicated by condemnatory or declaratory sentence. By the pollution of the church, the cemetery adjoining the church is not necessarily polluted, or *vice versa* (**Canon 1172**).

These crimes must be committed not only as to their exterior effects, but must be really crimes—that is to say, gravely sinful actions the sinfulness of which is manifest from the external circumstances. One can judge only from known circumstances of the culpability of a man who acts against the law, for no absolute conclusion as to a person's guilt in conscience can be had by human knowledge. The four offenses here enumerated were also considered by the former Canon Law to violate the dignity of a consecrated or blessed church. Under homicide wilful suicide is included. The various disreputable purposes to which a church may be exposed (especially in times of war, rebellion, persecution, etc.) are not specified in law, but any purpose that gravely violates the dignity and honor due to a public place of divine worship pollutes the church. The Code omits the *effusio seminis humani.* which, in the former law, was one of the offenses that pollute the church. About the burial of unbaptized persons there was some doubt in the former law. Among unbaptized persons, canonists excepted catechumens and infants of Christian parents, saying that they were not in the strict terminology of the law included under the term "infidels." Concerning the catechumens who without their own fault die before receiving baptism, the Code (Canon 1239) explicitly confirms the opinion of the canonists by saying that, in the matter of burial, they are to be considered equivalent to baptized persons. While the Code makes explicit provision for catechumens, it makes no special concession for infants of Catholics dying without baptism, but rules generally in Canon 1239 (the very Canon that makes the exception) that persons who die without baptism are not to be given ecclesiastical burial. Rossi holds that infants of Catholics who die without Baptism may not receive Christian burial,[20] while Coronata[21] is of the opinion that they do not come under the term of "infidels." The argument of Gasparri and other

[20] *La Sepultura Ecclesiastica,* n. 69.
[21] *De Locis et Temporibus Sacris,* n. 28.

canonists, who wrote before the Code, in favor of infants of Christian parents is not of much value now, because formerly, as Gasparri points out,[22] it was not certain in Canon Law that the burial of an infidel pollutes the church in which he is buried. Prümmer [23] and Augustine [24] both hold that unbaptized infants are included in the term "infidels."

1212. The pollution by the burial of an excommunicated person applies also to a cemetery, but it is disputed whether he must be an *excommunicatus vitandus,* or whether the burial of any one excommunicated by sentence of a competent ecclesiastical court pollutes church or cemetery. The reason for the doubt is that Canon 1242, speaking of the removal of an excommunicated person buried in a Catholic cemetery, speaks explicitly only of *excommunicati vitandi.* Canon 1175 speaking of the removal of an excommunicated person buried in a church does not qualify the sort of excommunication, but simply says that, if the church has been polluted by burial of an excommunicated person, the body is to be removed from the church before the rite of reconciliation is performed. It seems that the text of Canon 1172—saying that the church is polluted by the burial of a person excommunicated by a declaratory or condemnatory sentence of excommunication —is clear, and one cannot understand it only of *excommunicati vitandi,* without making a gratuitous addition to the specification of the Code. Canon 1175 evidently refers to Canon 1172 when it says that the body of an excommunicated person by whose burial the church was polluted is to be removed before reconciliation. Why does Canon 1242 insist only on the removal of an *excommunicatus vitandus* from a cemetery—not of persons excommunicated by sentence of an ecclesiastical court? One reason why the law stands thus may be that the Church is more severe in reference to burial in a church.[25]

1213. The offenses which pollute a church must: (1) be *certain* both as to law and fact; (2) be *notorious* either by notoriety of law (which comes through final sentence of a competent court pronouncing one guilty of the crime, or by confession of guilt in the court) or by notoriety of fact, which is described in Canon 2197 as being publicity of the offense to such an extent that it

[22] *De SS. Eucharistia,* I, n. 253.
[23] *Manuale Jur. Can.,* qu. 375, p. 446.
[24] *Commentary,* VI, 38.
[25] Rossi, "La Sepultura Eccl.," n. 31, footnote, p. 52.

cannot be kept secret, nor be excused by any excuse admitted in law. It does not seem necessary that the commission of the offence was notorious, but it suffices that it become widely public afterwards; (3) have been committed *inside the church. In odiosis,* the sacristy is generally not considered to be part of the church. The basement is part of the church only when it really serves for divine worship, and an entrance leads from the interior of the church to the chapel in the basement, which thus forms one place of divine worship together with the church. As to the killing or gravely wounding of a person, Gasparri says that the physical and proximate cause of death or injury must have occurred in the church. Thus, if the criminal was inside the church and shot a man walking outside, the crime really occurred outside the church; if the criminal was outside the church and shot a man in church, it is immaterial whether the victim dies there or elsewhere, for the church is polluted.[26]

Reconciliation of a Polluted Church

1214. It is not lawful to celebrate divine services, administer the sacraments, or bury the dead in a violated church before the rite of reconciliation has been performed. If the violation of the church happens during divine services, these shall stop at once. If the violation occurs during Mass, and before the Canon has been begun or after the Communion, the Mass shall be stopped at once; otherwise the priest shall continue the Mass until the Communion (**Canon 1173**).

A church that has been polluted shall be reconciled as soon as possible, with the sacred rites prescribed in the approved liturgical books. If the pollution of a church is doubtful, it may be reconciled *ad cautelam* (**Canon 1174**). A church which has been polluted by the burial of an excommunicated person or infidel shall not be reconciled until after the body of that person has been removed, if the removal can be accomplished without grave inconvenience (**Canon 1175**).

The Canon of the Mass begins with the prayer *Te igitur* The saying of Mass in a polluted church may become necessary, but the necessity should not readily be accepted as an excuse, for the Code gives very extensive faculties for performing the rite

[26] *De SS. Eucharistia,* I, n. 250.

of reconciliation. It has been officially declared that the saying of Mass in a polluted church (e.g., in a case of necessity) does not dispense with the necessity of performing the rite of reconciliation.[27] The removal of the body of a person who died in excommunication pronounced by a competent ecclesiastical court was discussed in connection with the offenses which pollute a church (cfr. above, n. 1212).

Persons Who Have the Power to Reconcile a Church

1215. A church which is blessed can be reconciled by its rector, or by any other priest with at least the presumed consent of the rector. The reconciliation of a consecrated church is vested in either the local Ordinary or the major religious superior of exempt clerical organizations, as determined by Canon 1156. In case of grave and urgent necessity, however, when the Ordinary cannot be approached, the rector of a consecrated church may perform the rite of reconciliation, and notify the Ordinary afterwards (**Canon 1176**).

The reconciliation of a blessed church may be done with ordinary holy water. The reconciliation of a consecrated church, however, is to be done with holy water specially blessed for that purpose with the ceremonies prescribed by the liturgical laws: this water may be blessed not only by the bishop, but also by the priest who reconciles the church (**Canon 1177**).

Canon 1176 abolishes the former law which demanded that, to reconcile a blessed church, a priest had to have the faculty from the bishop. The rector of a church has now by law the right to reconcile a blessed church. In this reconciliation the priest must follow the rite prescribed in the *Rituale Romanum*, cap. xxviii: *Ritus reconciliandi ecclesiam violatam si nondum erat ab episcopo consecrata.*" The reconciliation of a consecrated church is reserved to the local Ordinary, or, in the case of churches belonging to exempt clerical religious, to their major superior. Under the law before the Code, the reconciliation of a consecrated church was considered to belong to episcopal orders, so that a bishop could not delegate to a priest the power to perform this reconciliation unless he had special faculties for that purpose from the Holy See. The Code now changes this law, as

[27] Sacred Congregation of Rites, August 19, 1634; *Decreta Auth.*, n. 611.

is to be concluded from Canon 1176 (together with Canon 1147), and both the bishop and the major religious superior (for the respective churches which they have a right to reconcile) may delegate a priest. The prayers and ceremonies of reconciliation of a consecrated church must be taken from the *Pontificale Romanum.*

Churches Must Be Guarded against Irreverence

1216. All persons concerned must see that such cleanliness is maintained in the church as is becoming to the house of God. Business transactions and fairs, though held for a pious purpose, shall be kept out of church, and in general everything that is not in accord with the sanctity of the place (**Canon 1178**).

As Canon 1164 forbids the use even of rooms above or below a church for purely profane purposes, it is all the more solemnly forbidden to use the church itself for secular purposes and unbecoming transactions, even though they may be intended to promote works of religion or Christian charity.

Churches Have the Right of Asylum

1217. The church enjoys the right of asylum, so that any fugitive from justice who has fled into it may not, except in a case of urgent necessity, be taken out of it without the permission of the Ordinary, or at least of the rector of the church (**Canon 1179**).

From ancient times the Christian emperors honored the sacred edifices of the Church by giving them the right of asylum which the pagan temples had enjoyed in the Roman Empire. Lest the protection which the house of God offers should become an encouragement of crime, the right of asylum was declared to be forfeited in the case of a number of the more grievous and fully deliberate crimes. In his *Institutio xli,* Pope Benedict XIV discusses the right of asylum at length, quoting the Old Testament in which God had designated certain cities in the land of the Israelites as cities of refuge, and also referring to the heathen temples and the statues of emperors that had the right of asylum. Finally, he enumerates the crimes by which the right of asylum was forfeited, and quotes various documents of former

Popes on this matter.[28] The Council of Trent[29] speaks of the immunity of the church as established by the ordinance of God and by the laws of the canons. In the United States this right of churches is not recognized in the laws of the states.

The Title of Basilica

1218. The title of basilica cannot be given to any church except by apostolic indult or by immemorial custom, and the privileges of every basilica shall be also determined from the same sources (**Canon 1180**).

There are four major basilicas at Rome—the Lateran, the Vatican Basilica, St. Mary Major (also called the Liberian Basilica), and St. Paul Outside the Walls. These are also called the patriarchal basilicas, and are assigned to the four patriarchs of the Church: the Lateran to the Pope as the Patriarch of the entire Western Church, the Vatican to the Patriarch of Constantinople, the Liberian to the Patriarch of Antioch, and the Basilica of St. Paul to the Patriarch of Alexandria. A few churches have been elevated by papal indult to the dignity of patriarchal or major basilicas. They are distinguished by a papal altar and the Porta Sancta, which latter is opened only in the Jubilee Year by a delegate of the Pope. Minor basilicas have been frequently created by concession of the Supreme Pontiff, and enjoy various concessions with respect to the solemnity of sacred functions.[30]

Admission to Churches Must Be Free of Charge

1219. Admission to the sacred functions in church must be absolutely free of charge, all contrary custom being reproved (**Canon 1181**).

The very nature of a church or public oratory demands that all Catholics are at liberty to enter these places of divine worship, unless they are prohibited from entering by ecclesiastical penalty. No admission fee should, therefore, be charged. This point has

[28] *Opera Omnia Bened. XIV*, X, 182.

[29] Sessio XXV, cap. 20, *De Reformatione*. Pope Pius IX, "Multiplices inter," June 10, 1851, condemned as erroneous the opinion that the immunity of the Church and ecclesiastical persons has its origin or foundation in civil law. Cfr. Gasparri, "Fontes Cod. Jur. Can.," II, 855.

[30] Coronata, "De Locis et Temporibus Sacris," n. 49.

aroused considerable discussion in the United States, not merely since the Code was published but also previously, for the Code only states what has at all times been considered as an indisputable principle—namely, that Catholic people have the right of free entrance into church during the divine services or at any other time, unless for safety's sake the authorities keep the church doors locked outside the time of services. Since in America the only revenue for the erection and maintenance of churches and parochial schools and for the support of the priests, is derived from the voluntary offerings of the faithful made at the time of the divine services, it had become the practice in many parish churches to ask of every adult a small fee (usually ten cents) on entering the church. Ushers usually were stationed at the doors to receive the offering. There seemed to be nothing wrong about this practice, for it took the place of the pew rent, and the renting of pews had been recognized as legitimate. Some families rented pews, while others did not care to do this but preferred to pay the ten cents every Sunday. Nevertheless, there are some grounds for objection to this practice. In almost every parish there are some extremely poor people, who have not a cent to spare, and cannot without great hardship give even a small offering. By Encyclical Letters of the Sacred Congregation of the Propaganda, August 15, 1869, to all the bishops of the United States, it was absolutely forbidden to collect any money at the door from those entering to assist at the services.[31] At a later date, the Apostolic Delegate again insisted that the practice of demanding or accepting entrance fees at the church doors must be stopped.[32]

Administration of Goods of Churches

1220. Subject to the regulations of Canons 1519–1528, and unless the contrary is clear from some special title or legitimate custom, the administration of goods intended for the repair and decoration of a church and for the conducting of divine services in the same church, is vested in the bishop with his chapter in the case of a cathedral church; in the collegiate chapter, if the church is a collegiate one; in the rector in the case of all other churches.

[31] *Collectanea de Prop. Fide,* II, n. 1345.
[32] *Eccl. Review,* XLV, 592.

The offerings made for the benefit of a parish or a mission, or of a church located within the territory of a parish or a mission, are administered by the pastor or the missionary, unless the church has an administration of its own distinct from the administration of the parish or mission, or unless a special law or legitimate custom rules otherwise. The pastor, missionary, or rector of a secular church, whether he be a secular or religious, must administer the offerings in accordance with the regulations of the sacred Canons, and render an account of them to the local Ordinary, as provided by Canon 1525 (**Canon 1182**).

Canon 415 defines the respective rights of the chapter and the pastor in the administration of the goods of a cathedral or collegiate church, when this is also a parochial church. As to the administration rights and duties of a pastor belonging to a religious community, Canon 630 must be consulted (cfr. Volume I, n. 543). The parish churches, and the mission chapels attached to some parishes, are the only churches found in the United States except churches or chapels attached to religious houses: as the latter have their own administration, the local pastor cannot interfere except under special circumstances or because of special agreements.

1221. If other persons, whether clerics or laymen, are also admitted to participate in the administration of the goods of any church, they shall all form an administrative council of the church together with the ecclesiastical administrator spoken of in Canon 1182 (or his delegate), and under his presidency. Unless other provisions have been legitimately made, the members of this administrative board are to be nominated by the Ordinary or his delegate, and they can be removed by the same person for a grave reason (**Canon 1183**).

1222. The administrative council of a church (which, in the United States, is usually called the board of trustees) must see that the church property is properly administered in accordance with Canons 1522 and 1523 (which outline their duties), but they may not interfere in any way in all those matters which pertain to the spiritual office, especially:

(1) The exercise of worship in the church;

(2) The time and manner of ringing the church bells, and the maintaining of order in church and cemetery;

(3) The determination of the manner of taking up collec-

tions, making announcements, and performing other acts pertaining in any way to divine worship or to the adornment of the church;

(4) The arrangement of altars, communion rail, pulpit, organ, place for the church choir, seats and pews, offering boxes, and other things which pertain to the practice of religious worship;

(5) The admission or rejection of sacred utensils and other things destined for use, for the divine service, or for decoration in church or sacristy;

(6) The writing, arrangement, and custody of parish records and other documents which belong to the parochial archives (**Canon 1184**).

The sacristan, singers, organist, choir boys, sexton, grave diggers, and all others serving the church, are appointed, subject to, and discharged by the rector alone, without prejudice to legitimate customs and agreements and the authority of the Ordinary (**Canon 1185**).

The Latin term "fabrica" which occurs in Canon 1184 (where the Code speaks of the "consilium fabricæ") implies the sum total of the real and personal property and property rights of a church. In the United States the matter of church trustees who assist the pastor of a parish in the administration of church property is regulated by the Second and Third Councils of Baltimore, in which the regulations are almost identical with those in the Code, except in a few special points which the Code allows to be regulated by special law.[33]

Persons Bound to Keep Church in Repair

1223. Unless there are special legitimate customs or agreements, or an obligation is placed on some individuals even by the civil law, the burden of repairing the cathedral church falls successively on the following: (1) on the goods of the church (*bona fabricæ*), with the exception of that part of the funds which is necessary for conducting divine worship and defraying the expenditures of the ordinary administration; (2) on the

[33] *Conc. Baltimorense III*, cap. IV, *De Ædituis vel Curatoribus et Consiliariis laicis*, nn. 284–287; and *C. Baltimorense II*, n. 201.

bishop and the canons in proportion to their salaries, but the portion necessary for their proper maintenance must not be touched; (3) on the people of the diocese, whom however the local Ordinary should induce rather by persuasion than by coercion to furnish, according to their means, the necessary funds (**Canon 1186,** n. 1).

The burden of repairing a parish church rests on the following in the order here given: (1) on the goods of the church, subject to the stipulation stated above; (2) on the patron of the church; (3) on those who derive some income from the church, and they are to be taxed by the Ordinary in proportion to their income; (4) on the parishioners, whom the Ordinary should rather request than command, as stated above (**Canon 1186,** n. 2).

These rules shall, with due proportion, be observed also in reference to other churches (**Canon 1186,** n. 3).

1224. If a church is so dilapidated that it cannot possibly be used for divine worship, and if all means to repair it are wanting, the Ordinary may divert it to some decent profane use; the obligations with the respective funds (for instance, of foundation Masses), and the title of the parish, if it is a parochial church, shall be transferred to another church by the same Ordinary (**Canon 1187**).

TITLE X

OF ORATORIES

1225. An oratory is a place destined for divine worship, but not with the principal object of serving the faithful at large for public worship.

An oratory is called: (1) *Public,* if it has been erected mainly for the convenience of a body of men, or even of private individuals, but in such a manner that all the faithful have a legitimately established right to enter the oratory, at least at the time of divine services;

(2) *Semi-public,* if it has been erected for the convenience of some community or a group of the faithful, who meet there, but if not everybody is free to enter it;

(3) *Private* or *domestic,* if it has been erected in a private

house for the exclusive benefit of some family or of a private individual (**Canon 1188**).

Even though private, the oratories of Cardinals and of bishops, whether residential or titular, have nevertheless all the rights and privileges enjoyed by semi-public oratories (**Canon 1189**).

Small chapels erected in a cemetery by private individuals or families over their burial place, have the nature of private oratories (**Canon 1190**).

Public Oratories

1226. Public oratories are governed by the same laws as churches. If, therefore, with the authority of the Ordinary, a public oratory has been dedicated permanently to the public worship of God by blessing or consecration, as spoken of in Canons 1155 and 1156, all sacred functions can take place there except those that the laws of the rubrics forbid in oratories (**Canon 1191**).

Semi-Public Oratories

1227. Semi-public oratories cannot be erected without the permission of the Ordinary. The Ordinary shall not give this permission before he has inspected, either in person or through another ecclesiastic, the place where the semi-public oratory is to be established, and has convinced himself that the place is decently equipped for the purpose. Once the permission has been granted, the oratory cannot be turned to profane purposes without the authority of the same Ordinary. In colleges and other institutions for the education of youths, in high-schools, citadels, barracks of soldiers, prisons, hospices, etc., no other minor oratories should be erected besides the principal one, unless, in the judgment of the Ordinary, necessity or great utility makes their erection advisable (**Canon 1192**). In reference to the reservation of the Blessed Sacrament, see Canon 1265.

In semi-public oratories legitimately erected all sacred functions can be held except such as the rubrics or the orders of the bishop exclude (**Canon 1193**).

Private Oratories

1228. In private chapels in cemeteries, mentioned in Canon 1190, the Ordinary may permit habitually the celebration of even several Masses. In other private oratories he can allow only one Mass, and that only on some extraordinary occasion but not habitually, and for a good and reasonable cause. The Ordinary shall not give this permission unless he has, as Canon 1192 demands, inspected the place and found it properly adapted for the celebration of Holy Mass (**Canon 1194**).

Unless the contrary is expressly stipulated in the indult, Mass may be celebrated in private oratories which have been erected by indult of the Holy See, after the Ordinary has visited and approved of the place as specified in Canon 1192. One Low Mass may then be said each day, except on the more solemn feasts of the Church, and other ecclesiastical functions shall not be held in the oratory. For good reasons other than those for which the indult was granted, the Ordinary may allow Mass even on the more solemn feasts *per modum actus*—which means, not habitually, but by way of an exception in particular cases (**Canon 1195**).

The more solemn feasts referred to in this Canon are those mentioned in the *Cæremoniale Episcoporum,* lib. II, cap. 34, on which the bishop is to celebrate Mass in the cathedral, namely: Christmas, Epiphany, Easter, Ascension, Pentecost, St. Joseph, Annunciation, Assumption, Sts. Peter and Paul, All Saints, Titular, the Anniversary of the Dedication of the cathedral, and Holy Thursday. However, a Decree of the Sacred Congregation of Rites decided that it is not forbidden to say Mass on these days in a private oratory, unless they are holydays of obligation.[34]

Domestic oratories may not be consecrated or blessed after the manner of churches. Domestic and semi-public oratories may either be blessed with the *benedictio loci* (of the Roman Ritual) or not at all, but they must be reserved exclusively for divine worship, and may not be used for any domestic purposes whatsoever (**Canon 1196**).

[34] April 10, 1896; *Decreta Auth.*, n. 3896.

TITLE XI

OF ALTARS

1229. In the liturgical sense, (1) the term, *altare immobile seu fixum* (*immovable* or *fixed* altar), implies the upper table together with its supports, which are consecrated with it as a whole;

(2) the term, *altare mobile seu portatile* (*movable* or *portable* altar), implies the stone (usually small in size) which alone is consecrated, and which is called *ara portatilis* or *petra sancta* (sacred stone); or also the stone with its support, which, however, is not consecrated together with the stone.

In consecrated churches at least one altar, especially the main altar, must be immovable; in blessed churches all the altars may be movable (**Canon 1197**).

The terminology of the Code differs somewhat from that previously employed by the Sacred Congregation of Rites, which distinguished three kinds of altars—namely, two kinds of fixed altars and the portable altar. To have the whole altar consecrated, there must be the large stone slab and its supports of stone; to have a fixed altar in the sense in which that term is used in some of the liturgical decrees, it suffices that the altar be built of any material, but as a permanent fixture, and a portable altar stone may be placed on it. Thus, an altar which is to have the local indult of the privileged altar must be a fixed altar in the sense explained.[35]

Structure of Immovable and Portable Altars

1230. The table of an immovable altar, as well as the portable altar stone, must consist of a single slab of natural, solid and non-friable stone. In the immovable altar the stone table must cover the entire altar and must be properly joined to the support. The support—or at least the sides or columns on which the table rests—must also be of stone. The portable altar stone must be sufficiently large to hold the host and the larger part of the base of the chalice. In both the immovable altar and

[35] Sacred Cong. Indulg., Dec. 15, 1841; *Collectanea de Prop. Fide*, I, n. 944.

the portable altar there must be, in accordance with the liturgical laws, the sepulchre containing the relics of saints and closed with a stone cover (**Canon 1198**).

The altar stone must be of natural solid stone, and altars made of any artificial compositions cannot be consecrated. Sandstone, certain kinds of slate, and other natural stones that crumble very easily, cannot serve as altar stones. An immovable altar must have a large stone slab covering the entire surface of the altar, and that slab must rest on a structure of stone, or, if the understructure is of brick or other material, there must be in the four corners columns of stone on which the table rests. At the consecration the four corners of the stone slab are joined with the support by anointing the places where the altar slab touches the stone support. It is not necessary that the immovable altar be in contact with the foundation of the church; such an altar may be erected on a wooden floor. The cavity in which the relics are to be deposited in an immovable altar is usually cut into the center of the top of the stone slab, because this affords the easiest access to the cavity in the ceremonies of consecration. The cavity may also be constructed in the support, either in front, or in the rear, or on top of the support; in the last case, the altar slab itself is the cover for the *sepulchrum,* and therefore, at the consecration, the altar slab cannot be placed on the support until after the anointing of the *sepulchrum* and the depositing of the relics. The relics are to be relics of martyrs, usually at least two, but the relics of one martyr have been held sufficient for valid consecration. Relics of other saints, not martyrs, may be added.[36] In portable altar stones it is forbidden to cut the cavity for the relics into the side or edge of the stone; it must be cut in the top or bottom.[37]

Consecration of Altars

1231. To permit the celebration of Mass, the altar must be consecrated according to the laws of the liturgy—either as a whole in case of immovable altars, or merely the altar stone in case of portable altars. Besides persons specially privileged, every bishop may consecrate portable altars. In the case of

[36] Sacred Cong of Rites, Feb. 16, 1906; *Decr. Auth.,* n. 4181.
[37] Sacred Cong. of Rites, June 13, 1899; *Decr. Auth.,* n. 4032.

immovable altars, the law of Canon 1155 is to be observed (which rules that the right of consecrating places is vested in the local Ordinary). While the consecration of an immovable altar apart from the dedication of the church may take place on any day, it is more becoming that it should occur on a Sunday or other holyday of obligation (**Canon 1199**).

In the faculties given to the bishops of the United States by the Sacred Congregation of Rites, the bishops are empowered to delegate priests to consecrate immovable and portable altars with the formula of the *Pontificale Romanum*. If possible, ecclesiastical dignitaries should be appointed for this purpose. For the consecration of portable altars the priest may use the shorter form. That form closely resembles the shorter form for the reconsecration of a desecrated altar, which was published by the Sacred Congregation of Rites, September 9, 1920.[38]

Desecration of an Altar

1232. An immovable altar loses its consecration if the table or *mensa* is separated from its support even for a moment's interval: in this case the Ordinary may allow a priest to reconsecrate the altar with the shorter rite and formula.

Both the immovable altar and the portable altar stone lose their consecration: (1) if they are considerably broken, the seriousness of the fracture being determined either by its extent or by its relation to the place of anointing; (2) if the relics are removed, or if the cover of the sepulchre is broken or removed, except in cases where either the bishop or his delegate remove the cover in order to fasten it more securely or repair it, or to substitute another cover, or to inspect the relics.

A slight fracture of the cover does not induce loss of the consecration, and any priest can fill the crack with cement. The desecration of the church does not entail the desecration of the immovable or portable altars in the church, or *vice versa* (**Canon 1200**).

For the reconsecration of an immovable altar which has lost its consecration because the stone slab was momentarily separated from its support, a very short formula was published by the Sacred Congregation of Rites, September 9, 1920.[39] At the

[38] *Acta Ap. Sedis*, XII, 450.
[39] Cfr. App. III, 51.

same time the Congregation published the shorter formula of reconsecrating altars which have lost their consecration by considerable fracture, or by a break in the cover, or by the removal of either the cover or the relics. We referred to this formula under the preceding Canon.

Title of Altars

1233. Just as the church has its title, at least every immovable altar of the church should also have its own title. The primary title of the main altar should be the same as the title of the church. With the permission of the Ordinary the title of a movable altar may be changed, but not that of an immovable altar. Altars cannot be dedicated to beatified persons—not even in the churches and oratories which have the concession to say the Office and Mass of the *beatus*—unless an indult of the Apostolic See has been obtained (**Canon 1201**).

Proper Use of Altars

1234. Immovable as well as portable altars must serve exclusively for divine services, especially for Holy Mass, and they may not be put to any profane use. No bodies are to be buried under the altar. If bodies happen to be buried near an altar, they must be at least one meter away; otherwise it shall not be lawful to say Mass on such altar, until the body has been removed (**Canon 1202**).

The altar may not be used as a wardrobe for vestments and other articles. The Sacred Congregation of Rites declared that altars under which there is a vestment case cannot be consecrated.[40] In another instance it declared that shelves for choir books may be tolerated behind the altar under the steps on which the candlesticks stand, but not under the altar table itself.[41]

[40] December 20, 1890; *Decreta Auth.*, n. 3741.
[41] February 4, 1898; *Decreta Auth.*, n. 3987.

TITLE XII

OF ECCLESIASTICAL BURIAL

1235. The bodies of the faithful must be buried, and cremation is reprobated. If any one has in any manner ordered his body to be cremated, it shall be unlawful to execute his wish; if this order has been attached to a contract, a last will, or any other document, it is to be considered as not added (**Canon 1203**).

Ecclesiastical burial consists in the transfer of the body to the church, the funeral services held over the body in church, and its interment in the place legitimately appointed for the burial of the faithful departed (**Canon 1204**).

The great devotion and reverence exhibited by the early Christians to the mortal remains of those who had fallen asleep in the Lord is too well known to need comment here. The religious symbolism in the burial of the bodies of the faithful in consecrated ground is much more justified than the symbolism of freemasonry in the cremation of the bodies of the deceased. There is a very positive foundation for the symbolism of the Christian burial rite. In itself it is a matter of indifference how the bodies are disposed of after death, but, when cremation began to develop into a protest against the Christian teaching of the resurrection of the bodies, the Church had to insist all the more strongly on its ancient custom of Christian burial. The Code unqualifiedly forbids cremation in Canon 1203; in Canon 1240 it denies Christian burial to those who ordered their bodies to be cremated, unless they showed some signs of repentance before death; in Canon 2339 excommunication not reserved is inflicted *ipso facto* on those who dare to force ecclesiastical funeral services for those who by the law of the Church are deprived of ecclesiastical burial; those who of their own accord give Catholic funeral services to persons deprived of ecclesiastical burial are punished with an interdict *ab ingressu ecclesiæ,* reserved to the Ordinary.

When asked whether it was lawful to join societies which have for their purpose the promotion of cremation, and whether one could lawfully order one's own body or the bodies of others to be cremated, the Holy Office answered (May 19, 1886) that

neither could be done, and that, if there was question of joining cremation societies affiliated with the freemasons, the penalties of joining freemasons are incurred.[42] In some mission districts where Christian missionaries had great difficulty in stopping the custom of some of the castes or classes, the Church instructed the missionaries to tolerate such custom until such time as the missionaries had turned the minds of the natives to Christian ideals.[43]

Chapter I

OF CEMETERIES

1236. The bodies of the faithful are to be buried in a cemetery which has been blessed according to the rites given in the approved liturgical books, either with the solemn or simple blessing, by the persons mentioned in Canons 1155–1156.

No bodies shall be buried in churches except those of residential bishops, abbots or prelates *nullius* in their own churches, or of the Roman Pontiff, royal personages, and Cardinals (**Canon 1205**).

The simple blessing of cemeteries is contained in the *Rituale Romanum,* cap. xxix. The solemn blessing is to be given according to the *Pontificale Romanum* (*De Cœmeterii Benedictione*).

1237. Burial in the churches was not possible under the old Roman Law, which forbade burial within the city walls. After the Roman Empire had become Christian, the bodies of the martyrs were taken from the catacombs to the churches. The custom then developed of burying bishops, abbots, saintly priests and prominent laymen in church, first in the porticos and near the doors of the churches, and later within the church itself. The *Decretum Gratiani* cites a Decree from the Council of Nantes (in 658), which forbids burial in the church itself, but allows it in the halls (*atria*), porticos or environs of a church.[44] An-

[42] *Collect de Prop. Fide,* II, n. 1657. A Decree of the same Holy Office, Dec. 15, 1886, rules that if the body of a Catholic is to be cremated not by his own will but the will of others, funeral services may be held at his home and in the church, but the priest is not to accompany the body to the crematory (*Collect. de P. F.,* II, n. 1665). Public Mass may not be said for those whose bodies were cremated not without their own guilt in the matter; however, Mass may be said privately for them (Holy Office, July 27, 1892; *Collect. de P. F.,* II, n. 1808).

[43] *Collect, de Prop Fide,* II, n. 1626.

[44] c. 15, C. XIII, qu. 2.

other Decree, quoted by Gratian from the Council of Mayence, forbids burial in church to all except bishops, abbots, saintly priests and notable laymen,[45] but subsequently no distinction was made between the classes of persons who might or might not be buried in church. In fact, the *Rituale Romanum* indirectly recognizes the custom of burying the faithful in church: it first speaks of burial in cemeteries, and ordains that, where the ancient custom exists of burying the faithful in cemeteries, it should be retained, and, wherever possible, that custom should be restored; if, however, someone is given a burial place in church, it shall be only in the ground; bodies may not be buried near an altar. The Ritual is being revised at present to correspond with the Code.

The question naturally suggests itself here whether the prohibition of the Code to bury Catholics in churches (with the few exceptions made by the Code) is to be understood as extending to the interment of bodies in a vault built under the floor of a church in the basement, and to a basement chapel below the floor of the church. To the question whether the burial of the faithful in an underground church is to be considered done in church in the sense of Canon 1205, § 2, the committee for the Authentic Interpretation of the Code answered: "Yes, if the underground church is truly and properly a church, devoted to divine worship."[46]

1238. The Catholic Church has the right to possess her own cemeteries. Wherever this right of the Church is violated without hope of regaining the same, the Ordinaries should take care that the cemeteries belonging to the state are blessed, if those who are usually buried there are for the greater part Catholics, or at least that the Catholics may have a part of the cemetery reserved for themselves, which part is to be blessed. If not even this concession can be obtained, the individual graves should be blessed according to the rites in the approved liturgical books as often as the body of a Catholic is buried (**Canon 1206**).

In the United States the Catholic Church has no difficulty in acquiring and maintaining its own cemeteries, as there is no interference on the part of the states in this matter. Any private corporation, whether connected with a church or merely a

[45] c. 18, C. XIII, qu. 2.
[46] Cfr. App. III, 52, a.

business corporation, may own and manage cemeteries. The First Plenary Council of Baltimore was very severe in demanding that the pastor should refuse Catholic funeral services for a Catholic who was to be buried in a cemetery owned by a non-Catholic sect or by a secular corporation, if there was a Catholic cemetery in the place. The Second and Third Councils of Baltimore modify the prohibition of the First Plenary Council, stating that the rule had worked undue hardships in the cases of converts to the faith whose families had a family burial plot in some non-Catholic cemetery, and upon Catholics who had bought a burial plot in non-Catholic cemeteries before 1853 (the year in which the rule of the First Plenary Council was made), and finally upon Catholics who after that year had bought the burial plot in such cemeteries in good faith. In these cases, therefore, funeral services may be held in the house and in the church, and the individual graves are to be blessed.[47]

The laws of the Canons concerning the interdiction, violation, and reconciliation of churches, are to be applied also to cemeteries (**Canon 1207**).

Every Parish to Have Its Own Cemetery

1239. Every parish should have its own cemetery, unless the local Ordinary has legitimately designated one common cemetery for several parishes.

The exempt religious may have a cemetery of their own, distinct from the common cemetery. Other moral personages and private families may be also permitted by the local Ordinary to have a special burial place, apart from the common cemetery, which place is to be blessed like the cemetery (**Canon 1208**).

In parochial cemeteries with the written permission of the local Ordinary or his delegate, and in the proper cemetery of some other ecclesiastical body with the written permission of its superior, the faithful may construct for themselves and their families special burial places, and may also, with the consent of the same Ordinary or superior, convey these to others.

[47] *Conc. Balt.* II, nn.391–392; *Conc. Balt.* III, nn. 317–319; *Eccl. Review*, LX (1919), 82.

Wherever possible, the graves of priests and other clerics should be separated from those of the laity in a place more becoming to their station; moreover, where it can be conveniently arranged, one place should in this space be set apart for priests, and another for inferior ministers of the Church. The bodies of infants should likewise be buried in a plot specially set apart for them, if it can be conveniently arranged (**Canon 1209**).

In towns and cities where the price of land within easy reach from the city is very high, it is not practicable to have a separate cemetery for each parish, and the Code makes allowance for such conditions. In the United States, the cemetery is held by the church corporation, and is managed and controlled like private property. Just as one may sell property subject to certain restrictions, the lots (or individual graves) of a cemetery are sold subject to the cemetery rules, which every diocese in the United States doubtless has, and inserts in the contract of sale. It has been always understood that the pastor (or other priest in charge of a cemetery, or sometimes a layman appointed for that purpose) is delegated by the bishop to sell lots.[48]

Care and Management of Cemeteries

1241. Every cemetery should be suitably enclosed on all sides and carefully guarded (**Canon 1210**). The local Ordinaries, pastors, and superiors concerned shall see that the cemeteries shall contain no epitaphs, eulogistic inscriptions, and ornaments, which are discordant with Catholic faith and piety (**Canon 1211**). Besides the blessed cemetery there should be, if possible, a separate well-enclosed and guarded place for the interment of those to whom ecclesiastical burial is denied (**Canon 1212**).

Since, according to the American law, the owners of lots have not an absolute right to use this property as they please, it is not difficult in the United States to bar from the cemetery whatever is unbecoming or objectionable from the point of view of the Church. The reverence due to the faithful departed and

[48] Interesting points in reference to the civil law of the United States on cemeteries held by ecclesiastical corporations can be found in Zollmann's "American Civil Church Law," Chapter XVI, *Church Cemeteries*, pp. 433–443 (ed. 1917, Columbia University, New York).

to a Catholic cemetery demands that the pastor in charge should take loving care of the hallowed place. Frequently, the proceeds from the sale of the lots are insufficient, and the parish is too poor to pay a sufficient number of workingmen to keep the cemetery in the most perfect condition, but there can be no excuse for failure to keep it at least respectable. The Third Council of Baltimore states that pastors have a real obligation to see that the cemetery is in good condition, so that the faithful may not have just reason for complaint regarding its untidy and neglected appearance, and for objecting to be buried there.[49] The Second Council of Baltimore commands that the money derived from the sale of lots shall be used for the upkeep of the cemetery; if there be any surplus, this shall be used for religious and charitable purposes as the Ordinary may direct.[50]

1242. No body shall be buried (especially in cases of sudden death) until after a proper and sufficient time has elapsed to remove all doubt of actual death (**Canon 1213**).

In civilized countries the civil law usually determines the length of time that must elapse between the death of a person and the burial. Medical men seem to agree that there is no absolutely certain sign of death except putrefraction. It is said that the procedure of embalming bodies (which is almost universal in the United States) makes certain that persons are not buried alive; but one must not call the undertaker until it is from all appearances certain that the person is actually dead.[51]

Exhumation of Bodies

1243. Without the permission of the Ordinary it is not lawful to exhume a body which has been assigned by the Church its final resting place anywhere. The Ordinary shall not allow the exhumation of a body, unless it can with certainty be distinguished from other bodies (**Canon 1214**).

The civil laws of the various civilized countries have regulations concerning the exhumation of bodies; sometimes, the court orders it for the sake of an autopsy to determine the precise cause of death. If private individuals desire to raise or transfer a body, it is usually not sufficient to get the authorization of the

[49] *Conc. Balt. III*, n. 319. Lamps on graves, cfr. App. III, 52, b.
[50] *Conc. Balt. II*, n. 393.
[51] Antonelli, "Medicina pastoralis," II, nn. 922–978.

bishop, for the laws of most states require a permit from some specified health officer.

Chapter II

OF THE TRANSFER OF THE BODY TO THE CHURCH, FUNERAL SERVICES AND INTERMENT

1244. Unless a serious cause prevents it, the bodies of the faithful are to be brought to the church before burial, and the funeral services are to be held there according to the rites prescribed in the approved liturgical books (**Canon 1215**).[51a] The church to which the body is to be taken is by ordinary law the proper parish church of the deceased, unless the deceased has legitimately chosen another church for his funeral. If the deceased had several proper parishes, the funeral services should be held in the church of the parish in which he died (**Canon 1216**). In a doubtful case as to the right of another church, the right of the proper parish church of the deceased must always prevail (**Canon 1217**).

The Code summarizes the former extensive legislation on funeral rights. First, it treats of the church which is entitled to conduct the funeral services, supposing that the deceased did not designate a church. This so-called *sepultura electiva* is regulated in detail by Canons 1223–1228. Where the parishes have well-defined territorial boundaries, the above-mentioned Canons clearly indicate what parish has the right to the funeral. By domicile and by quasi-domicile a proper parish is acquired. The cases in which a person dies outside his own proper parish are considered in the succeeding Canons of this chapter (viz., Canons 1218–1222). In places where the parishes are determined by the language of the people (as is the case with many parishes in the United States), it is more difficult to determine the proper parish of the deceased. Since this is an unusual condition, not contemplated by the Code, the particular law has to be consulted—namely, the Plenary Councils of the respective countries and the diocesan statutes—to ascertain who is a member of a language parish.

[51a] Cfr. App. III, 53, b.

Burial of Person Dying Outside His Own Parish

1245. If a person dies outside his own parish, the body is to be brought to his nearest proper parish church for the funeral services, supposing that the funeral procession can be made on foot without inconvenience; otherwise to the church of the parish in which he died.

After investigating its peculiar circumstances, every Ordinary may determine for his territory the distance and other conditions which render it inconvenient to transfer the body to the proper parish or place of burial. If the parish in which one dies and the proper parish of the deceased are in different dioceses, the rules concerning the transfer of the body made by the Ordinary of the diocese in which the person died are to govern.

Even though the transfer of the body to the church where the funeral should be held (the proper parish of the deceased or the church he chose for his funeral) or to the burial place is inconvenient, the family, heirs, and others concerned shall always have the right to transfer the body thither upon assuming the expenses of the transfer (**Canon 1218**).[51b]

1246. If a Cardinal dies in the City of Rome, the body is to be transferred for the funeral services to that church which the Roman Pontiff shall appoint; if he dies outside the City, he is to be buried from the most prominent church in the city or place of his death, unless he has chosen another church for his funeral. The funeral of a residential bishop (even though he be a Cardinal), or of an abbot or a prelate *nullius*, is to take place in his own cathedral, abbatial or prelatial church, if that can be conveniently done; otherwise, the body is to be taken to the most prominent church in the city or place where he died. In either case, if the deceased has chosen a church for his funeral, the body should be transferred to that church (**Canon 1219**).

1247. Residential beneficiaries are to be transferred to the church where they held the benefice, unless they have chosen another church for their funeral (**Canon 1220**).

1248. In case of death outside the religious house, professed religious and novices are to be transferred to the church or oratory of their house, or at least to some house of their organization, unless novices have chosen another church for their funeral. Their religious superior has always the right to conduct the

[51b] Cfr. App. III, 53, a, e and f.

funeral procession from the place where the religious died to the church where the funeral services are to take place. If a religious dies far away from home, and his body cannot conveniently be taken to his own house or any house of his organization, he is to be buried from the church of the parish where he died, unless, in the case of a novice, he has chosen another church for his funeral. The religious superior, however, has the right spoken of in the third paragraph of Canon 1218, to transfer the body, if he so wishes, from any place to a church of his organization. The rules of this Canon in reference to the novices apply also to servants in the actual service of a religious community, who live steadily within the precincts of the religious house; if, however, they die outside the religious house, they are to be buried according to the rules of Canons 1216–1218 (**Canon 1221**).

This Canon deals only with the question of the church from which the funeral is to be held. Canon 1230 specifies who has the right to hold the funeral services over a deceased religious. The servants in religious houses who die within the precincts of the religious house are treated like the novices, unless they have chosen a special church for their funeral; if they die outside the religious house, they come under the common rules for the burial of the faithful.[52]

1249. Persons who have stayed in a religious house (even of regulars) or a college, either as guests or for the purpose of education or health, and persons who have died in a hospital, are to be buried according to the regulations of Canons 1216–1218, unless the particular law or a privilege allows an exception. Those who die in a seminary are to be buried according to the regulations of Canon 1368 (**Canon 1222**).

An exception is made here from the rule of Canon 6 that particular laws contrary to the Code are revoked. In the matter of the burial rights of the persons mentioned in Canon 1222, the particular law and privileges are given preference. In speaking of inmates of a seminary, the Code says "those who die in the seminary." It thus makes no explicit provision for seminarians and other persons who regularly live in the seminary but die outside the same. Wherefore, the general rule that one must be buried from one's own proper parish church, unless one had

52 Rossi, "La sepultura ecclesiastica," n. 55, p. 102.

legitimately chosen a funeral church, must be applied also in this case.

Choice of Burial Church and Cemetery

1250. Unless they are explicitly forbidden by law, all the faithful may choose a church for their funeral, as well as a cemetery for their burial. In this free choice of church or cemetery wives, as also children who have reached the age of puberty, are entirely independent of the authority of husband and father (**Canon 1223**).

The free choice of a church or a cemetery for their funeral is forbidden to the following: (1) to children who have not reached the age of puberty, but the parents or guardians may even after the death of these children make the choice; (2) to professed religious of any rank or dignity, unless they are bishops (**Canon 1224**).

The free choice of the funeral church and of the place of burial is well protected by the laws of the Decretals,[53] and the Code substantially retains the former law on this point. For the *impuberes* the father, or (if he is dead or does not act) the mother, or (if the children are entrusted to such) the legal guardian, may choose the church for the funeral and the burial-place. In the former law canonists seem to have agreed that the choice had to be made while the children were living, but the Code explicitly allows such choice even after their death. By the term "*parentes,*" one must very likely understand father and mother exclusively—not grandfather or grandmother, to whom the term is extended in Canon 542, § 2—because the former law was very strict in its use of the term in this matter. To the question whether the mother can choose the burial church for an infant, a decision of the Sacred Congregation of the Council answered that she cannot, unless a legitimate custom gives her that right.[54] Another decision of the same Congregation declared that parents and guardians—not other relations or heirs—could choose the funeral church and burial place for infants.[55] Religious who have taken vows (temporary or perpetual,

[53] *Decretal. Greg. IX*, c. 1, *De Sepulturis*, lib. III, tit. 28.
[54] *Conc. Trident.* (ed. Richter), p. 461.
[55] Rossi, "La sepultura ecclesiastica," n. 58. p. 112.

simple or solemn) in a religious organization, are deprived of the right to choose the church and cemetery for their burial.

1251. For validity, the choice of a funeral church must fall on either a parish church, or a church of regulars, or another church having the right to hold funerals: however, a patron of a church (a person who has built or endowed a church) may choose that church, even though otherwise it is not entitled to have funeral services. In churches attached to convents of nuns (Sisters with solemn vows) funeral services cannot be held for outsiders, but women who lived permanently, not accidentally, within the enclosure, either as servants, or for reason of education or sickness, or as guests, may choose the church of the nuns as their funeral church (**Canon 1225**).

1252. The funeral church or cemetery may be chosen by a person either directly or through another by legitimate mandate; the fact that a choice has been made, or the mandate given, may be proved in any legitimate manner. If the choice is made through another, that person may make the choice even after the death of the person who issued the mandate (**Canon 1226**).

1253. Religious and the secular clergy are strictly forbidden to induce any person to vow, or swear, or otherwise promise, with or without an oath, to choose their church or cemetery for the funeral or burial, or not to change a choice already made. If the law of this Canon should be violated, the choice is null and void (**Canon 1227**).

1254. If the deceased chose some cemetery other than that of his proper parish, he shall be buried there, provided there is no objection on the part of those in charge of such cemetery. If the cemetery of a religious organization was chosen, the consent of the superior entitled by the constitutions to grant such permission is required and suffices for the burial (**Canon 1228**).

The faithful may choose a church for their funeral services, and they may also choose a cemetery for their burial, even though this is not connected with the church chosen for the funeral rites. As to the cemetery which may be chosen, Canon 1208 must be considered. Parish churches and the houses of exempt religious have by law the right to have their own cemeteries. The bishop may allow other religious organizations, confraternities, or societies, and even private families, to have their own places of burial. Any cemetery that is legitimately established, may be

chosen by the faithful as their burial place, provided the persons in charge can and do permit the burial. If they refuse, the deceased is entitled to be buried in the cemetery of the church which had the funeral, according to Canon 1231. Hence, one must conclude that if the deceased has (as allowed by Canon 1225) chosen a church of a regular Order (i.e., an Order of men with solemn vows), and has also chosen their cemetery as the place of burial, the regulars may not take the funeral if they do not wish to bury the person in their cemetery. Though the exempt religious may have their own cemetery, and though the right of the faithful to choose a cemetery is not limited by the Code (if the religious according to their constitutions can and are willing to accept the choice), the right of the faithful to choose a church for the *funeral services* is limited by Canon 1225 to parochial churches and to churches of regular Orders.[56] The choice of a *cemetery* is regulated by Canon 1228.

Family Burial Places

1255. If a person, who has a family burial place in some cemetery, dies without having chosen a burial place elsewhere, he is to be buried with his ancestors if his body can be conveniently transferred to that place, or, regardless of the inconvenience, if his family or heirs are willing to defray the expenses of the transfer. The wife shares the burial place of her husband, or, if she had been married several times, of her last husband. If the family or husband has several burial places, the family or heirs of the deceased shall select the place of burial (**Canon 1229**).

The natural desire to be buried with one's relations is respected by the Church, and she gives preference to the ancestral burial place or plot, unless the deceased has expressed a desire to be buried elsewhere. It is very common here in the United States to have family plots in cemeteries, and, as we saw, the Church allows the acquisition of such burial lots by individuals and families with the consent of the local Ordinary in the case of diocesan cemeteries, and the consent of the religious superior in the case of cemeteries of exempt religious. But the right to hold the funeral services is one thing, and the question of the burial place is another. The fact that one has a family

[56] Blat, "Commentarium," lib. III, n. 83.

plot in a parish cemetery, does not imply the right of that parish to the funeral, for the person may freely choose a church for the funeral. If the person has moved from the parish where he has the ancestral burial plot, the funeral is to be held at the proper parish church (place of domicile or quasi-domicile), unless the person has chosen another church for his funeral.

Rules about Funeral Services

1256. The proper pastor of the deceased has not only the right but also the duty, except in case of grave necessity, to escort the body from the house to his parish church and to conduct the funeral services, unless (as Canon 1216 allows) the person has chosen another church for the funeral. If the person has died in the territory of another parish and the body can be easily taken to the deceased person's own parish church, the proper pastor of the deceased may enter the territory of this other pastor after notifying him of the fact, and conduct the funeral procession to his church and hold the exequies (**Canon 1230,** §§ 1–2).[56a]

If the funeral is to take place in a church of regulars, or another church exempt from the jurisdiction of the pastor, the proper pastor has the right to conduct the body from the house to the church where the funeral services are to take place, under the cross of the church which has the funeral, but the rector of the church has the right to perform the funeral services. If, however, the church which has the funeral is not exempt from the jurisdiction of the pastor, the celebration of the funeral services does not belong to the rector of the church, unless he has that right by special privilege, but to the pastor in whose territory the church is situated, provided the deceased was a subject of the pastor (**Canon 1230,** §§ 3–4).

1257. The bodies of religious women and of their novices who die in the convent, are carried by the Sisters to the limit of the enclosure; thence, if the deceased belonged to a body of religious who are not subject to the jurisdiction of the pastor, the chaplain of the convent conducts the body to the proper church or oratory of the convent, and holds the funeral services. In the case of other religious women (not exempt from the jurisdiction of the pastor), the pastor conducts the body to his parish church, and holds the funeral services, as was stated in the first paragraph

[56a] Concerning proper pastor's right to funeral, cfr. App. III, 53, c.

of this Canon. Concerning Sisters who die outside their convent, the general laws of the Canons are to be followed (**Canon 1230,** § 5).[56b]

1258. If a Cardinal, or a bishop, dies outside of Rome in a city where there is a bishop's see, the precept of Canon 397, n. 3, must be observed (**Canon 1230,** § 6).

1259. If the body is sent to a place where the deceased did not have his proper parish, and where he has not legitimately chosen a church for his funeral, the right to conduct the body to church and hold the funeral services (if they are to be held in that place) and to accompany the body to the burial place belongs to the cathedral church, or, where there is no cathedral church, to the pastor of the church to which the cemetery of interment belongs, unless local custom or the diocesan statutes ordain otherwise (**Canon 1230,** § 7).

The Interment

1260. On the termination of the funeral services in the church, the body is to be interred in the cemetery of the same church with the ceremonies prescribed by the liturgical books, unless the body is to be taken to some other cemetery in accordance with Canons 1228 and 1229. The priest who conducts the funeral services in church, has not only the right but also the duty (except in cases of grave necessity) to accompany, either in person or through another priest, the body to the burial place (**Canon 1231**).

In the United States it has been the practice in many places for the priest to finish the funeral rites in the church and not to escort the body to the cemetery. It is rather a cold and unchristian conclusion to the beautiful and consoling funeral rites of the Church, when the interment is left to the undertaker, and there is no priest at the grave to say the final prayer as the body is laid to rest. As the funeral director usually employs automobiles to convey body and mourners to the cemetery, it does not take much time to-day to go to the cemetery, even if it is some distance outside the city or town. There is, therefore, in many instances no real necessity to excuse the priest from accompanying the body. There may be a long-standing custom in a diocese contrary to this rule of the Code, and the Ordinary perhaps may

[56b] Casket of deceased Sister not to be covered with white pall, cfr. App. III, 53, g.

allow this to continue (in virtue of Canon 5), but the practice of some parishes where the priest goes to the cemetery if the deceased was a pew holder, and does not escort other deceased parishioners, does not seem reasonable, because, if a person is entitled to ecclesiastical burial, he is entitled also to the last part of the burial service.[57] In a case in which a certain bishop had forbidden pastors and other priests of a city to accompany the body to the public cemetery because of the distance and inconvenience, and because there was a chaplain appointed for the cemetery, the Sacred Congregation of the Council condemned this prohibition, and declared that pastors are bound by law to accompany the bodies of their parishioners to the cemetery, and they must do so even in case of the poor who cannot pay for the funeral services.[58]

1261. The priest who conducts the funeral procession to the church or to the cemetery, has the right to pass freely through the territory of another parish or diocese with stole and upright processional cross, even without the permission of the pastor or the Ordinary. If the body is to be buried in a distant cemetery to which the body cannot conveniently be carried, the pastor or rector of the church at which the funeral services are conducted cannot claim the right to accompany the body outside the limits of the city or town (**Canon 1232**).

1262. Without a just and grave reason approved by the Ordinary, the pastor cannot prevent secular clerics, religious, and pious societies, who have been invited by the family or the heirs, from accompanying the body to the church and to the burial place, and from assisting at the funeral services. However, the clergy of the church where the funeral services are held should be invited by the family or the heirs in preference to all others. Societies and emblems clearly hostile to the Catholic religion shall never be permitted at the funeral. Those who assist at the funeral procession must respect the orders of the pastor in the arrangement of the procession, subject to each one's right of precedence. No matter what dignity he has held or to what family he has belonged, the body of a lay person shall never be carried by the clergy (**Canon 1233**).

[57] Augustine, "Commentary," VI, 140; *Eccl. Review*, LXVII (July, 1922), 12.

[58] January 26, 1907; *Acta S. Sedis*, XL, 156.

Referring to the admission into church of flags, banners, and other such emblems on the occasion of a funeral, or any other liturgical functions, the Sacred Congregation of Rites recently declared that, if they do not belong to a society which is openly contrary to the Catholic faith or to a society whose statutes have been condemned by the Church, and if these flags, banners, or emblems do not in themselves portray something forbidden or condemned by the Church, they may be admitted into the church edifice. If a blessing is asked for these flags or emblems out of respect for the Church and in a quiet and peaceful manner, they may be blessed according to the formula of the *Rituale Romanum.*[59] This Decree or Instruction reverses a former Decree of the same Congregation, which forbade the admission into church at liturgical functions of national flags or of any other except religious banners. There is a formula for blessing religious banners in the *Rituale Romanum.*[60]

Funeral Fees

1263. Where such does not already exist, local Ordinaries shall draw up for their territory a schedule of funeral taxes or offerings, giving due consideration to the legitimate particular customs and all the special circumstances of persons and places. They shall consult the Cathedral Chapter (or diocesan consultors) in making these regulations, and, if they think it advisable, they may also consult the vicars-forane (deans) and the pastors of the episcopal city. The schedule of taxes should for the various cases determine the fees, which must be moderate and fixed in such a manner that all occasion for contention and scandal is removed and the rights of all concerned are well defined. If several classes of funeral are enumerated in the schedule, the party who arranges for the funeral has the right to choose freely between them (**Canon 1234**).

Every one is strictly forbidden to exact more than the diocesan schedule allows for burial or funeral services or for anniversaries. The poor shall be given decent funeral and burial services absolutely free of charge, according to the laws of the

[59] December 15, 1922, published March 26, 1924; cfr. App. III, 50, a.
[60] July 14, 1887; *Decreta Auth.*, n. 3679.

liturgy and the regulations of the diocesan statutes (**Canon 1235**).

The Proper Pastor's Share of Funeral Offerings, when Funeral Is Held in Another Church

1264. Whenever one of the faithful is not buried from his own parish church, his proper pastor is to receive the parochial portion of the funeral offerings, unless the particular law ordains otherwise, or unless the deceased cannot conveniently be brought to his proper parish. If the deceased had several proper parishes to any of which the body could have easily been conveyed, and the funeral is held elsewhere, the parochial portion is to be divided among the various proper pastors (**Canon 1236**).

1265. The parochial portion is to be taken from the entire offerings fixed by the diocesan tariff for the funeral services and for the burial, and from these fees only. If for any reason only minor functions are held on the day of burial, and the first solemn service for the deceased is held within a month from the day of burial, the parochial portion shall be deducted also from the fees given for the delayed funeral services. The share of the parochial portion is to be fixed by the diocesan schedule; if the parochial church of the deceased and the funeral church belong to two different dioceses, the share of the parochial portion is to be reckoned according to the schedule of the diocese where the funeral takes place (**Canon 1237**).[60a]

In the United States the people hardly know of their right to choose a church for their funeral, and for this reason it is a rare occurrence for persons to be buried from any other but their own parish church. In view of the circumstances of many language parishes in cities and towns, it may be difficult to decide which is a person's proper parish. In the former law, when a person had chosen another church for burial, the proper pastor's share of the funeral offerings was one quarter (*quarta funeralium*). There is extensive legislation on this point, as one can see from Cardinal Gasparri's notes to the Code. The Code does not determine the share due to the proper pastor, but wants the individual Ordinaries to fix the amount, along with the list of funeral charges. Even in the former law the share was by no means the same everywhere; customs favorable to the proper

[60a] For various decisions touching Canon 1237, cfr. App. III, 53, d.

pastor were approved under the former law, and thus it came to pass that in some places the portion of the proper pastor was one-third, or even one-half of the funeral offerings.[61] The Orders of Friars Minor, Friars Preachers, Carmelites, and (by communication of privileges) other Mendicant Orders also, are (except in their houses in Italy and its adjacent islands) exempted from the paying of the parochial portion. The Council of Trent did not abolish the privilege, but ordained that, in places where by custom the houses of these religious had for the forty years prior to this Decree of the Council paid the parochial portion, they were to continue paying it.[62]

Registration of Deaths

1266. After the funeral, the minister shall mark down in the death register the name and age of the deceased, the names of the parents or spouse, the date of death, the priest who administered the last sacraments and what sacraments were given, and also the time and place of interment (**Canon 1238**).

The term "minister" in this Canon is very vague so that it is difficult to know which priest has the obligation to record the deaths. Canon 470 obliges the pastors to keep the various parish records, including the *liber defunctorum.* The *Rituale Romanum,* cap. ii, tit. 10, enumerates the records which every pastor must keep, and, when it mentions the death register, it adds that this book must be kept also in all other churches from which the dead are buried. It seems that the church which holds the funeral services is obliged to keep the record of persons buried from that church. If a person is not buried from his own parish church, but at the time of his death belonged to a parish by reason of domicile or quasi-domicile, it is to be recommended that the proper pastor be informed of the death, since he is supposed to have such record of his parishioners; the Code, however, does not explicitly impose on the church which buries the subject of another parish this duty of informing the proper pastor.

[61] Bull "Romanus Pontifex" of Pope Benedict XIII, April 28, 1725; Gasparri, "Fontes Cod. Jur. Can.," I, 609.

[62] Sessio XXV, cap. 13, *De Reform.*—Cfr. Lyszczarczyk, "Compendium Privil. Regular.," 188.

CHAPTER III

OF THE PERSONS TO WHOM ECCLESIASTICAL BURIAL IS TO BE GRANTED OR DENIED

1267. Unbaptized persons may not receive ecclesiastical burial, with the exception of catechumens who, through no fault of theirs, die without having received baptism, and are therefore to be regarded as among those baptized. All baptized persons must be given ecclesiastical burial, unless they are expressly deprived of it by law (**Canon 1239**).

The Code states that no unbaptized persons may receive ecclesiastical burial, except only catechumens under certain conditions. Wherefore, as we said above when speaking of the desecration of a church or a cemetery by the burial of unbaptized persons, if infants of Catholic parents die without baptism they may not be buried in a blessed cemetery.

PERSONS WHO ARE TO BE DENIED ECCLESIASTICAL BURIAL

1268. The following persons are deprived of ecclesiastical burial, unless they have before death given some signs of repentance:

(1) Notorious apostates from the Christian faith, notorious adherents of an heretical or schismatical sect, or of the Masonic Order or other societies of the same kind;

(2) Persons excommunicated or interdicted by condemnatory or declaratory sentence;

(3) Person guilty of deliberate suicide;

(4) Persons who died in a duel or from wounds received in it;

(5) Persons who have given orders for the cremation of their bodies;[62a]

(6) Other public and manifest sinners.

When any doubt arises in the foregoing cases, the Ordinary shall be consulted if time permits; if the case remains doubtful, ecclesiastical burial shall be granted but in such manner that scandal is avoided (**Canon 1240**).

In the first and second cases the Code makes it plain that notoriety or public knowledge is required—in the first case it is notoriety of fact, and in the second notoriety of law. In the

[62a] Concerning cremation, cfr. App. III, 53, i and j.

case of suicide, a duel, and an order to cremate one's own body, the Code does not state that the offense must be publicly known; nevertheless, n. 6 seems to indicate that these offenses must be notorious before one is deprived of ecclesiastical burial. Besides, Canon 2232 lays down as a general principle that any penalty inflicted by the law itself does not oblige the person to undergo the penalty, unless the offense is notorious; if it is not notorious, the penalty cannot be urged except after a declaratory sentence of the competent authority. With reference to violations of the precepts of Canon 1240, cfr. Canons 2272 and 2339.

1269. When ecclesiastical burial has been denied a person, it is also forbidden to celebrate for this person any funeral Mass, or anniversary Mass, or any other public funeral services (**Canon 1241**).

Since the penalty of refusal of ecclesiastical burial is so severe —forbidding not only the transfer of the body to church and its interment in the sacred place, but also any prayers or sacred burial rites—the priest must refuse burial only when the case is, beyond a reasonable doubt, one of those six fixed by Canon 1240. If any reasonable doubt exists as to the culpability of the person, or about the sufficient publicity of his offense, or any other material point, the pastor is ordered by the Code to consult his Ordinary, if time permits. If the pastor cannot consult the Ordinary, the words of the Second Council of Baltimore apply: "In doubt, let the Ordinary be consulted if possible; otherwise let judgment lean to leniency and mercy. This we especially counsel whenever the deceased, having been overtaken by a sudden death, had no time for repentance: since, according to the norm of law, *odia restringenda sunt.*" [63]

1270. If feasible without serious inconvenience, the body of an *excommunicatus vitandus,* that had in violation of the laws of the Canons been buried in a sacred place, is to be exhumed and interred in that part of the cemetery which, according to Canon 1212, is not blessed. Canon 1214, which demands the permission of the Ordinary for the exhumation of any body, must be observed (**Canon 1242**).

Many formalities are required to render a person an *excommunicatus vitandus*—namely, excommunication by name pronounced by the Holy See, public announcement of the excom-

[63] *Acta et Decreta C. Balt. II,* n. 389.

munication, and special mention in the decree that the person is a *vitandus*. The only crime by which one becomes *ipso facto* an *excommunicatus vitandus* is assault of the person of the Roman Pontiff (cfr. Canons 2258 and 2343). The Holy Office was asked whether an excommunicated person who was a public and notorious sinner, and who was either dead or unconscious when the priest arrives, may be given ecclesiastical burial when the relations or friends who called the priest assert that he wanted the priest, or that he gave signs of repentance by kissing the crucifix or by other manifestations of devotion. The Sacred Congregation answered that ecclesiastical burial may be given to him, but that ecclesiastical pomp and solemnity must be avoided at the funeral. If extraordinary circumstances arise in any case, the pastor shall consult the Ordinary and follow his orders.[64]

Section II

OF SACRED SEASONS

1271. Sacred seasons are the holydays, and in addition the days of fast and abstinence (**Canon 1243**). The supreme authority of the Church alone has the right to establish, transfer, or abolish holydays of obligation and days of fast and abstinence for the Universal Church. Local Ordinaries may for their respective dioceses or territories appoint holydays of obligation and days of fast and abstinence only *per modum actus*—that is, temporarily but not perpetually (**Canon 1244**).

Before the Constitution "Universa" of Pope Urban VIII was promulgated, the bishops had the right to establish holydays of obligation. That Constitution enumerated the holydays of obligation to be kept in the Universal Church, and forbade bishops to establish other days of obligation in their respective dioceses.[65] A Declaration of the Sacred Congregation of Rites stated that the bishop cannot institute other holydays of obligation in his diocese besides those mentioned in the Constitution of Pope Urban VIII.[66] The Code, however, allows the bishop to

[64] September 19, 1887, quoted by Rossi, "La Sepultura Ecclesiastica," n. 73, p. 139.
[65] September 13, 1642; Gasparri, "Fontes Cod. Jur. Can.," I, 427.
[66] June 23, 1703 (*Decreta Auth.*, n. 2113).

establish a holyday of obligation temporarily. The precise meaning of the phrase "per modum actus" is nowhere defined in the Code; wherefore, it is impossible to determine for how long a time the bishop may order the observance of a day as a holyday of obligation, although it is certain that he cannot make it such permanently. As to the days of fast and abstinence, there was no prohibition in the common law of the Church to prevent the bishop from appointing for his diocese days of fast and abstinence besides those obligatory on the whole Church by Papal law. The Code sets the same limits on the power of the local Ordinaries to appoint days of fast and abstinence as on their power to establish holydays of obligation.

Power of Dispensation

1272. Not only local Ordinaries, but pastors, may in special cases and for a good reason dispense individual persons or individual families subject to their jurisdiction (even when these are outside their territory), and strangers while they stay in their territory, from the common law regarding the observance of the holydays of obligation, of fast or abstinence, or even of fast and abstinence combined. Ordinaries may also, for reason of a great concourse of people on some special occasion or for the sake of public health, dispense the whole diocese or locality from the obligation of fast or abstinence, or from both. In exempt clerical religious organizations the superiors have the same faculties as pastors for the benefit of the religious themselves and all persons mentioned in the first sentence of Canon 514 (**Canon 1245**).

It is evident that no authority inferior to the Supreme Pontiff can dispense from obligations imposed by the common law of the Church. If then other persons exercise such power, it must have been granted to them either by concession of the Supreme Authority or by custom legitimately established. The power which is here explicitly granted by the Code was before the Code attributed to them by custom, with the exception of the power of the bishop to dispense the whole diocese: according to a Declaration of the Holy Office,[67] the bishop could not grant this general dispensation, even when he had the papal faculty to dispense from fast and abstinence.

[67] March 17, 1883 (*Collectanea de P. F.*, II, n. 1594).

Subjects may be released from the obligation of the holyday, or of fast and abstinence, whether they are within or outside the territory of the Ordinary or the pastor. Strangers (that is, persons who have neither domicile nor quasi-domicile in the diocese or parish) may be dispensed when they actually are in the diocese, and they may make use of the dispensation for as long as it has been conceded—even after they have left the diocese or parish, provided the reason for the dispensation continues. The superiors of exempt clerical organizations of religious who can give dispensations from the obligation to observe holydays and days of fast and abstinence, are either major superiors (General, Provincial) or local superiors, because the Code grants the power to superiors generally. The power is limited "ad modum parochi" (after the manner of a pastor), and therefore restricted to individual religious; the dispensation of the entire community is not included in this faculty as granted by the Code.[68]

1273. The duration of a holyday of obligation, as well as of days of fast and abstinence, is to be reckoned from midnight to midnight, without prejudice to the concession which Canon 923 makes for the gaining of the indulgences attached to some feast (**Canon 1246**).

TITLE XIII

OF FEAST DAYS

1274. The only holydays of obligation for the universal Church are the following: All Sundays, the feasts of Christmas, the Circumcision, the Epiphany, the Ascension, Corpus Christi, the Immaculate Conception, the Assumption, St. Joseph, Sts. Peter and Paul, and All Saints. The patron feasts (of a town, diocese, country) are no longer holydays of obligation, but the local Ordinaries can transfer the external solemnity to the Sunday immediately following. If any of the above-mentioned feasts have been legitimately abolished or transferred in some country, no change may be made without consulting the Holy See (**Canon 1247**).

The feasts of obligation had been reduced by the "Motu Proprio" of Pope Pius X, July 2, 1911, and the present Canon is

[68] Fürich (Biederlack), "De Religiosis" (1919), 59; Schäfer, "Ordensrecht," 71.

in accordance with that document, except that the Feast of St. Joseph, suppressed by the said "Motu Proprio," has been replaced by the Code.[69] In the United States the holydays of obligation have been reduced, at the request of the Fathers of the Third Plenary Council of Baltimore, to six days—Christmas, the Circumcision, the Ascension, the Immaculate Conception, the Assumption, and All Saints—by Decree of the Holy Office, December 31, 1885.[70]

The question was proposed to the Committee for the Authentic Interpretation of the Code whether by the above Canon all other holydays of obligation have been *ipso facto* revoked, though in some nation, diocese or place they were observed as days of obligation introduced by particular law, or long-standing custom, or special concession of the Holy See. The answer was that they have been *ipso facto* abolished.[71]

1275. On holydays of obligation Holy Mass must be heard, and one must abstain from servile work and from judicial proceedings; also, unless legitimate custom or special indults make an exception, from public markets, fairs and other public buying and selling (**Canon 1248**). One may fulfill the obligation of hearing Mass by assisting at the Holy Sacrifice celebrated in any Catholic Rite, either in the open air or in any church, public or semi-public oratory, and in the private mortuary chapels in cemeteries spoken of in Canon 1190, but not in private oratories, unless this privilege has been granted by the Holy See (**Canon 1249**).

Canon 1248 states the well-known twofold obligation on Sundays and holydays of obligation—the obligation to hear Mass and abstain from servile works and occupations. Pope Innocent XI condemned the proposition: The precept to keep the holydays does not oblige under mortal sin, provided there is no scandal or contempt.[72]

In private oratories Mass may not be said unless one of the principal grantees of the privilege is present. Principal grantees are those only to whom the document of concession is addressed, and whose names appear on the reverse side of the document. The obligation of hearing Mass is satisfied in private oratories by

[69] *Acta Ap. Sedis*, III, 305.
[70] *Acta et Decreta C. Balt. III*, p. cv.
[71] Cfr. App. III, 3, i.
[72] Denziger-Bannwart, "Enchiridion," p. 354, prop. 1202.

the principal grantees, by their blood-relations and relations by marriage to the fourth degree inclusive who live with the grantees in the same house, by their guests, and by the servants of the house whose service is actually required at the time of Mass.[73]

TITLE XIV

OF ABSTINENCE AND FASTING

1276. The law of abstinence forbids the eating of fleshmeat and of broth made of meat, but does not exclude the use of eggs, milk and milk products (cheese and butter), and any seasonings of food though made from the fat of animals (**Canon 1250**).

The broth meant here is a soup made by boiling meat or bones in water. The juice of the flesh may be had in certain extracts from which a broth can be made, and that also falls under the *jus ex carne,* forbidden by the Code on abstinence days. There is considerable controversy and uncertainty concerning the species of animals that may or may not be eaten on days of abstinence—such animals and birds, namely, which live in or near waters and feed almost exclusively on fish or other substances in rivers, swamps, lakes or oceans. This question is very old, for already St. Thomas tried to explain the difference between animals that may and may not be eaten, saying that by forbidden fleshmeat is meant the flesh of animals that sleep (some texts have, "are born") and breathe on land—that is to say, animals which usually live a long time out of water.[74] Beavers, otters, seals, wild ducks and various water fowl are excluded by most authors from Lenten food, while others maintain that it depends on the custom of the respective places whether they may be eaten on days of abstinence.[75]

The "condimentum ex adipe" is a seasoning made from the fat of animals. The fat of animals constitutes layers of tissues distinct from their flesh; the white flesh (as in bacon), which at times is also called fat, is flesh in the true sense of the term.

1277. The law of fasting prescribes that only one full meal

[73] Noldin, "Theol. Moral," II (*De Præceptis,* 1921), n. 262.
[74] *Summa,* II–II, qu. 147, art. 8.
[75] Coronata, "De locis et temporibus sacris," n. 297.

a day be taken, but does not forbid a small amount of food in the morning and in the evening. As to the kind of food and the amount that may be taken, the approved customs of the place are to be observed. It is not forbidden to eat both fleshmeat and fish at the same meal, nor to interchange the midday and evening meal (**Canon 1251**).

Most of the provisions of this Canon are taken from the former law. The distinction, however, between fast and abstinence is new, in so far as up to the promulgation of the Code the abstinence from fleshmeat was considered essential to the fast. The Code now specifies the days on which both fast and abstinence are obligatory, and the days on which fast only is of obligation. New is also the abolition of the former prohibition on fast days—and in Lent even on Sundays—to eat fleshmeat and fish at the same meal, which prohibition Pope Benedict XIV had urged so strongly in his Encyclical "Non ambigimus."[76]

While the Code indeed states that the obligation to fast is distinct from that of abstinence, it does not follow from this that on those days when fast only is prescribed one may eat meat, not only at the principal meal, but also at luncheon. The question was proposed to the Holy See whether one could with a safe conscience follow the opinion of some authors that, since the promulgation of the Code, it is permitted to eat fleshmeat several times a day on days which are fast days only. The Cardinal Prefect of the Committee for the Authentic Interpretation of the Code answered that it is not safe to follow that opinion.[77]

1278. *Abstinence only* is enjoined on the Fridays throughout the year. *Fast and abstinence together* are to be observed on the following days: Ash Wednesday, Fridays and Saturdays in Lent, Ember days, and the Vigils of Pentecost, the Assumption, All Saints, and Christmas. *Fast only* is prescribed for all the other days of Lent.

On Sundays and holydays of obligation, except on a holyday in Lent, there is neither fast nor abstinence, and, if a vigil that is a fast day falls on a Sunday, the fast is not to be anticipated on Saturday (as the law heretofore demanded), but is dropped

[76] May 30, 1741; Gasparri, "Fontes Cor. Jur. Can.," I, 678.
[77] Cfr. App. III, 54, a.

altogether that year. The Lenten fast and abstinence cease at twelve o'clock noon on Holy Saturday (**Canon 1252**).

The days on which the law of fasting only and those on which the laws of both fast and abstinence are to be observed, are enumerated in Canon 1252. In the name of all the bishops of the United States, the Archbishop of Baltimore asked the Holy See to transfer the abstinence on Saturdays in Lent to the Wednesdays, with the exception of Ember Saturday. The Sacred Congregation of the Council, January 14, 1919, granted the request for two years. A similar reply was given for Canada on the same day.[78]

In the United States no holyday of obligation occurs in Lent, but where the feast of St. Joseph (March 19) is kept as a holyday of obligation, the question arose whether the fast, or fast and abstinence, remain when the feast falls on a Friday or Saturday in Lent. The answer was that, according to Canon 1252, neither fast nor abstinence ceases. The Committee further declared that the abolition of the anticipated vigil fast on Saturday, when the feast falls on Monday, applies to the whole year.[79] It is clear from the wording of the Code that the cessation of fast and abstinence (except during Lent) is made in favor of holydays of obligation only, not of suppressed feasts, or feasts kept by popular devotion. The bishop may, however, give a dispensation from fast and abstinence on the strength of Canon 1245, when there is an unusually large gathering of people in a certain locality for religious or secular purposes.

1279. The foregoing Canons make no change in particular indults, in the vows of either individual persons or communities, or finally in the constitutions and rules of religious organizations and approved institutes of men or women living in community, even those without vows (**Canon 1253**).

The workingmen's indult was first granted for the United States by the Sacred Congregation of the Propaganda, March 15, 1895; it was granted for ten years, renewed for another ten years in 1905, and again for ten years, June 3, 1915.[80] According to this indult, the bishops can dispense working people and their families from abstinence on all days except the Fridays

[78] *Ecclesiastical Review*, LX (1919), 574. Cfr. App. III, 3, h.
[79] For this and other decisions, cfr. App. III, 54, b–f.
[80] *Eccl. Review*, XII, 425; LIII, 329.

throughout the year, Ash Wednesday, Holy Week (which week is now modified as to abstinence by the Code), and the Vigil of Christmas. To Catholic men in the United States army and navy, while they are in actual service, and their families eating with them, Pope Pius IX granted dispensation from abstinence on all days except Ash Wednesday, the three last days of Holy Week (now modified by the Code), and the vigils of the Assumption and Christmas.[81] These indults remain, according to Canon 1253, and they are not to be considered revoked by the decree of the Sacred Consistorial Congregation, April 25, 1918, which revoked the faculties which were granted by the printed formulas for five, ten, etc., years. The workingmen's indult and that for the army and navy were not granted by those formulas, but upon special request.

With regard to the special fasts which members of religious organizations may be bound to observe by vow, or by their rule and constitutions, the Code states that it does not intend to change such obligations. With reference to the days of fast and abstinence obligatory on religious as well as on seculars by the law of the Code, the Sacred Congregation of Religious has declared that they enjoy the benefit of the mitigations and dispensations granted to a country by Apostolic indult, unless the indult expressly excludes them.[82]

1280. The law of abstinence binds all who have completed their seventh year of age; the law of fasting binds all persons from the completion of their twenty-first year until the beginning of their sixtieth (**Canon 1254**).

The Sacred Penitentiary declared that persons who, because of their age or work, are not obliged to fast, may eat meat at all their meals on the days in Lent on which persons bound to fast may by indult eat meat once a day.[83] In recent times certain moralists held that persons either dispensed or excused from the fast could eat meat at all their meals, if an indult allowed meat once a day to those obliged to fast. In fact, the Sacred Penitentiary stated that it was not expedient for the bishop to limit the dispensation from abstinence on fast days to the eating of fleshmeat once a day for those not obliged to

[81] Sabetti-Barrett, "Theol. Moral." (ed. 1916), n. 338.
[82] September 1, 1912 (*Acta Ap. Sedis*, IV, 626).
[83] January 16, 1834, and May 27, 1863 (*Acta S. Sedis*, I, 426).

fast.[84] The Code makes most of the days in Lent days of fast only; wherefore, persons who are not obliged to fast are entirely free on these days to eat fleshmeat as often as they desire.

1281. A case was submitted to the Sacred Congregation of the Council as to whether, in dioceses where by Papal indult the abstinence on Saturdays in Lent had been transferred to Wednesday, strangers were bound to abstain on Wednesday, instead of Saturday. The Sacred Congregation stated that the substance of the precept of abstinence in Lent demands two days of abstinence and, this being the universal law, all Catholics are subject to it. The manner, however, of complying with this law in the dioceses referred to is a particular law. Strangers are not bound by the particular law fixing Wednesday as a day of abstinence, but they must abstain either on Wednesday or on Saturday, and, provided they give no scandal, they are free to choose either Wednesday or Saturday.[85]

The two indults of the Holy See concerning abstinence—namely, the workingmen's indult and the indult to transfer the Saturday abstinence in Lent to Wednesday—were renewed for the last time for five years in 1926 at the request of the Hierarchy of the United States through His Eminence Cardinal O'Connell. The indults expired in 1931. On February 2, 1932, His Excellency the Apostolic Delegate informed the local Ordinaries that he had obtained for the year 1932 the renewal of the indults (1) to transfer the abstinence in Lent from Saturdays to Wednesdays, and (2) to dispense workingmen and their families from the law of abstinence on all days except Fridays throughout the year, Ash Wednesday, the forenoon of Holy Saturday, and the vigil of Christmas. On April 21, 1932, the Apostolic Delegate further informed the local Ordinaries that it is the desire of the Sacred Congregation that in future the Ordinaries apply individually and directly to the Holy See for the renewal of these indults.

[84] Sabetti-Barrett, "Theol. Moral." (ed. 1916), n. 334, p. 305.
[85] Cfr. App. III, 5, e.

PART THREE

OF DIVINE WORSHIP

1282. To the Blessed Trinity and to each of the three Persons and to Christ our Lord also under the sacramental species, is due the cult called *latria* (adoration in its proper sense); to the Blessed Virgin Mary the cult called *hyperdulia;* to the other saints reigning with Christ in heaven the cult called *dulia.* To sacred relics and images is also due veneration and cult in proportion to the person to which the relics and images refer (**Canon 1255**). The terms *latria, hyperdulia, dulia* are technical expressions commonly employed in dogmatic theology, and they need not be explained here.

If the cult is given to God, the saints or beatified persons in the name of the Church by persons legitimately appointed for this purpose and by acts (forms of worship) instituted by the Church, it is called *public* cult; otherwise it is called *private* (**Canon 1256**).

The Holy See alone has the right to regulate the sacred liturgy and to approve liturgical books (**Canon 1257**).

The Supreme Authority of the Church has reserved to itself the regulation of the entire public worship of the Church in order to preserve the purity of faith, for the public prayers and ceremonies of the Church give expression to the principles of faith. There can be no doubt that the Supreme Pontiff is the divinely appointed guardian of the faith, and therefore also the guardian of the liturgy or divine worship. In the early days of the Church the prayers and ceremonies of divine worship were handed down from generation to generation. Provincial Councils watched over the sacred liturgy as it developed from its primitive forms to a more elaborate ceremonial, until these forms crystallized and became fixed in the exercise of the public worship. By his Bull "Immensa," January 22, 1588, Pope Sixtus V created the Sacred Congregation

of Rites, and gave it exclusive control of the entire public worship of the Church. When the official texts of the Roman Missal, Ritual, and Breviary were published by the Holy See, allowance was made for deviations from these books introduced from ancient times by some dioceses and religious Orders. These special Missals, Rituals and Breviaries have, however, been examined by the Holy See, and after their approval nobody may change or modify them.

1283. The printing and publishing of liturgical books is reserved to the Holy See. By law of Pope Clement VIII (Bull "Cum in Ecclesia," May 10, 1602), new editions are to be printed only by firms specially authorized by the Holy See, and every sheet of these so-called typical editions must be submitted to the Sacred Congregation of Rites before it is put on the press. Local Ordinaries may authorize other printers to copy the typical editions, but must vouch for the correctness of the copy.

Participation of Catholics in Non-Catholic Worship

1284. It is unlawful for the faithful to assist in any active manner, or to take part in the sacred services of non-Catholics. At funerals of non-Catholics, at their marriages, and similar solemnities, provided there is no danger of perversion or scandal, passive or merely material presence on account of a civil office or for the purpose of showing respect to a person may be tolerated for a grave reason, which in doubtful cases must be approved by the bishop (**Canon 1258**).

Many cases relative to the forbidden communication in religious services of non-Catholics have been decided by the Holy See on the basis of the particular facts submitted to the Supreme Pontiff. Most of these cases have been grouped together by Blat in his commentary on the Code.[1] Thus, it has been declared that a Catholic may not contribute money towards the building of an heretical church, or give his work gratis. The building of non-Catholic churches and synagogues by Catholic workmen and architects is not forbidden, unless circumstances arise which make such coöperation an insult to the Catholic faith. Visiting a non-Catholic church as a sight-

1 *Commentarium*, lib. III, *De Rebus*, pp. 145–152.

seer is not forbidden, but one may not be present at non-Catholic prayers, services or sermons either in a church or elsewhere. A Catholic may not be sponsor at the baptism of Protestant or schismatical children given by their minister; to be selected as best man or bride's maid at a Protestant wedding is usually considered in America as merely a mark of honor and friendship, not as officially witnessing the marriage contract. If a priest wishes to attend a non-Catholic funeral because the non-Catholic was his relation or friend, he may not wear any sacred vestments, nor take active part in the religious ceremony performed by the non-Catholic minister.

1285. As to the participation of non-Catholics in Catholic worship, it is forbidden to have non-Catholics sing in the choir.[2] Permission to engage a Protestant organist was granted with great reserve by the Holy Office, namely only temporarily, while a Catholic cannot be had, and provided the Catholics take no offense.[3] Heretics and schismatics may not be sponsors in Catholic Baptism and Confirmation; they likewise may not be witnesses at Catholic marriages, but the Ordinary can tolerate it for a grave reason, provided there is no scandal. The mere passive assistance of non-Catholics at Catholic services is not forbidden.[4]

Right and Duty of Local Ordinary to Supervise Public Worship

1286. Prayers and pious exercises in churches or oratories shall not be permitted without the revision and express permission of the local Ordinary, who in more difficult cases shall submit the whole matter to the Apostolic See. The local Ordinary cannot approve new litanies to be recited publicly (**Canon 1259**).

The prohibition concerning litanies existed before the Code, and should be understood in the sense of the former Decrees on this point. According to Declarations of the Sacred Congregation of Rites, litanies not approved by the Holy See cannot be recited by a number of people together in a church or pub-

[2] *Instr. S. Officii*, June 22, 1859 (*Collect. de P. F.*, I, n. 1176).

[3] Holy Office, February 23, 1820 (*Collect de P. F.*, I, n. 739); Prohibition for Catholics to play organ at Protestant services, Holy Office, July 8, 1889 (*Collect. de P. F.*, II, n. 1713). Cfr. also App. III, 87.

[4] Holy Office, Aug. 19, 1891 (*Collect. de P. F.*, II, n. 1765).

lic oratory, even though the services are not conducted by the priest as minister of the Church.[5] Nuns may not recite such litanies in choir, even though the choir is divided off from the church by grates.[6] Another Decree stated that the Sisters may not recite such litanies in common in a public church, or in a choir which is part of a church, or in a public oratory.[7] The litanies approved by a local Ordinary may be recited privately. The Holy See strictly forbids the interpolation of invocations in approved litanies, and also deviations from the form in which they are approved. It was permitted, however, to let the choir chant three of the invocations with their responses and have the people sing the fourth with its response.[8] Recently the invocation: "Ut omnes errantes ad unitatem Ecclesiæ revocare et infideles universos ad Evangelii lumen perducere digneris: Te rogamus, audi nos," was added to the Litany of All Saints after the invocation: "Ut cuncto populo Christiano, etc."[9]

1287. The ministers of the Church must depend solely on the authority of the ecclesiastical superiors in the exercise of divine cult (**Canon 1260**). The Church has her commission from Christ, and she possesses that power independently of state or secular power, wherefore she protests in this Canon against interference in carrying out God's commission.

1288. It is the duty of the local Ordinaries to see that the precepts of the sacred canons regarding divine worship are faithfully observed, and that neither into public nor into private worship, nor into the private lives of the faithful, any superstitious practices are introduced, or anything admitted that is contrary to faith or discordant with ecclesiastical tradition, or has the appearance of sordid profit-making. If the local Ordinary publishes any laws concerning these matters for his territory, all religious, even the exempt ones, are also bound to observe them, and the Ordinary can visit their churches and public oratories to see that such precepts are obeyed (**Canon 1261**).

1289. It is to be desired that, in harmony with the ancient discipline of the Church, the women should be separated in

[5] March 6, 1894 (*Decreta Authentica*, n. 3820).
[6] June 1, 1896 (*Decreta Authentica*, n. 3916).
[7] February 11, 1898 (*Decreta Authentica*, n. 3981).
[8] Cfr. App. III, 40, d.
[9] Sacred Cong. of Rites, March 22, 1922 (*Acta Ap. Sedis*, XIV, 199).

church from the men. The men should assist at divine services, either in church or outside of it, with uncovered heads, unless the approved customs of the people or peculiar circumstances demand the contrary; the women should assist in modest dress and with heads covered, especially when they approach the Table of the Lord (**Canon 1262**).

The separation of men and women is desired, but not insisted upon by the Code, and in the United States it is not the practice to reserve one place for men and another for women. According to the general Catholic custom, when entering a church, the men always uncover and the women cover their heads, even though no services are going on at the time. In some of the missionary districts other customs prevail, for their ways of showing respect differ from those in Europe and in countries colonized by Europeans. As to the modesty of women's attire, the sanctity of the place should dictate moderation in following some of the modern fashions. Serious-minded Catholic women use good judgment in these matters, but unfortunately many whose faith is superficial lack the delicate sense of Christian propriety.

1290. Civil officials may, according to their rank and dignity, be assigned a special place in the church, according to the regulation of the liturgical laws. Without the explicit permission of the local Ordinary pews in church may not be reserved by the faithful and their families, and the Ordinary should not give the consent except where sufficient provision has been made for the accommodation of the rest of the people. There is always the tacit understanding in these permissions that the Ordinary can for a good reason revoke the permission, no matter for what length of time individuals or families have held such pews (**Canon 1263**).

The law of the Decretals forbade lay persons to stand near the altar at the celebration of the sacred mysteries or to sit among the clergy.[10] The *Cæremoniale Episcoporum* rules that, in accordance with the rule of the sacred canons and the practice of the ancient and laudable discipline introduced from the very beginning of the Christian religion, the seats for prominent laymen, no matter how high their rank may be, must be outside

[10] *Decretal. Greg. IX*, c. 1, *De vita et honest. cler.*, lib. III, tit. 1.

the choir and sanctuary.[11] The renting of pews for the use of individuals or families is a general practice in the United States, and the pew rent forms one of the main sources of the income of parishes. The Third Plenary Council of Baltimore demands that a sufficient number of places remain free for the benefit of the poor who are unable to pay pew rent.[12]

Sacred Music

1291. Musical compositions for the organ or other instruments or for the voice, which contain anything lascivious or voluptuous, must be absolutely barred from church, and the liturgical laws concerning sacred music shall be observed. Religious women, in so far as they are allowed by their constitutions or the liturgical laws and the permission of the local Ordinary to sing in their own church or public oratory, shall sing from a place where they cannot be seen by the people (**Canon 1264**).

The first part of Canon 1264 is taken from the Council of Trent.[13] Many years ago, the Sacred Congregation of the Propaganda issued an Instruction to the Archbishop of Baltimore on the necessity of barring from the church all theatrical and worldly musical compositions.[14] In 1903 Pope Pius X inaugurated a thorough reform of church music.[15] The provision in the *Motu Proprio* of the Supreme Pontiff, that women are not to have a part in the strictly liturgical chants of the sacred liturgy, has been the most difficult to comply with in many parish churches, and in not a few there could never be a High Mass or any liturgical singing if women were to be excluded. A Decree of the Sacred Congregation of Rites to the Archbishop of Los Angeles, in Mexico, seems to modify to some extent the absolute prohibition of the *Motu Proprio* concerning women and the liturgical chant, but the Decree as reported in the *Decreta Authentica* of the Sacred Congregation of Rites is so obscure in its wording that nothing certain can be concluded

[11] Lib. I, cap. xiii, n. 13.
[12] *Acta et Decreta*, n. 289 (Appendix, p. 231).
[13] Sessio XXII, *Decr. de observ. et evitand. in cel. Missæ.*
[14] June 22, 1884 (*Collect de P. F.*, II, n. 1621).
[15] November 22, 1903 (*Collect de P. F.*, II, n. 2182).

from it.[16] With patience and persevering interest in the ancient solemn and prayerful chants of the Church, the pastors can, in many parishes at least, restore the dignity of Catholic worship.[17]

TITLE XV

OF THE CUSTODY AND CULT OF THE HOLY EUCHARIST

1292. The Blessed Sacrament may be kept in the following churches, if there is a person to guard it, and if the priest regularly celebrates Holy Mass at least once a week in the place:

(1) It must be kept in the cathedral church and in the principal church of an abbey or a prelacy *nullius*, of a vicariate and prefecture Apostolic, in every parochial and quasi-parochial church, and in a church attached to houses of exempt religious men or women;

(2) It may be kept with the permission of the local Ordinary in collegiate churches and in the principal (public or semi-public) oratory of religious houses and pious institutes, and also in ecclesiastical colleges in charge of the secular clergy or of religious organizations (**Canon 1265**, § 1).

1293. In other churches and oratories it cannot be kept except by apostolic indult. The local Ordinaries can for a good reason grant this permission to a church or public oratory *per modum actus* only (that is to say, temporarily but not perpetually). Nobody is allowed to keep the Blessed Sacrament in his home or to carry it with him on a journey (**Canon 1265**, §§ 2–3).[17a]

The Code demands in general terms that there must be some person—not necessarily a priest—to guard the Blessed Sacrament. Formerly the bishop could not allow the keeping of the Blessed Sacrament in oratories of religious communities or in educational or charitable institutions, a faculty from the Apostolic See being required.[18] Former regulations, as well as the Code, demand that Holy Mass be said at least once a week in places where the Blessed Sacrament is kept. If this cannot be

[16] January 17, 1908 (*Decr. Auth.*, n. 4210).
[17] *Ecclesiastical Review*, XXXIX, 700.
[17a] Concerning subsidiary chapels, cfr. App. III, 55, a.
[18] Sacred Cong. of Rites, March 8, 1879 (*Decr. Auth.*, n. 3484).

done regularly, the bishop has no power to allow the keeping of the Blessed Sacrament in a church or chapel, for the Code sets it down as a positive requirement.

1294. The churches in which the Blessed Sacrament is kept, especially parochial churches, should be open to the faithful for at least a few hours daily (**Canon 1266**).

1295. In religious houses and pious institutes the Blessed Sacrament can be kept in the church or principal oratory only, and in the convents of nuns (Sisters with solemn vows) it cannot be kept inside the choir or enclosure. All privileges to the contrary are revoked (**Canon 1267**).

The question arose whether the Blessed Sacrament may be kept in more than one chapel in some of the convents, academies and colleges, homes for the aged or for orphans, hospitals, etc. The Committee for the Authentic Interpretation of the Code answered: If the religious house or pious institute has a public church, and the community uses the same for the ordinary daily religious exercises, the Blessed Sacrament is to be kept in that church only. If this is not the case, the Blessed Sacrament may be kept in the principal oratory or chapel of the religious house or institute, without prejudice to the rights of the church (if it has any) to keep the Blessed Sacrament. If there are several formally distinct and separate (religious) families in one and the same house or institution, each may have its own chapel with the Blessed Sacrament, because virtually they form separate religious houses or institutions.[19]

1296. The Blessed Sacrament cannot be kept continually or habitually in more than one altar of a church. It should be reserved in the most prominent and distinguished place in a church, and therefore, as a rule, on the main altar, unless another altar is more convenient and appropriate for the veneration and worship of this great Sacrament: this regulation, however, does not affect the liturgical laws concerning the last three days of Holy Week.

In cathedral, collegiate and conventual churches in which choir functions are conducted at the main altar, it is as a rule more convenient not to keep the Blessed Sacrament on the main altar but on a side altar or in some chapel of the church, so that the ecclesiastical offices shall not be interfered with.

[19] Cfr. App. III, 55, b.

The rectors of churches shall see that the altar of the Blessed Sacrament be ornamented above all others so that its very appearance shall incite the faithful to greater piety and devotion (**Canon 1268**).

There are occasions when the Blessed Sacrament may for a time be kept on several altars in the same church. For example, the rubrics demand that, during the Forty Hours' Devotion, the Blessed Sacrament be removed from the altar of exposition to another altar (if there is one that serves the purpose), so that Holy Communion may not be distributed from the altar of exposition. Again, churches which have perpetual adoration must keep the ciborium on a side altar for the distribution of Holy Communion.[20] The *Cæremoniale Episcoporum* demands that the Blessed Sacrament be removed from the altar at which the bishop holds solemn pontifical functions.[21]

The Tabernacle

1297. The Blessed Sacrament must be kept in an immovable tabernacle, placed in the middle of the altar. The tabernacle should be well constructed, securely closed on all sides, properly ornamented according to the liturgical laws, free from all other things, and guarded so well that there is no danger of profanation. For a grave reason and with the approval of the local Ordinary it is allowed to take the Blessed Sacrament out of the tabernacle overnight, and to keep it in a safer but decent place on a corporal, and with a light burning before it, as Canon 1271 demands. The key of the tabernacle in which the Blessed Sacrament is kept must be most carefully guarded; this is a grave obligation of conscience on the part of the priest who has charge of the church or oratory (**Canon 1269**).

The Code does not state that the tabernacle key must necessarily be kept by the priest, but it makes him responsible for its safe keeping. The tabernacle is subject to the approval of the local Ordinary, and, if he demands a steel safe for the greater protection of the Blessed Sacrament, churches and chapels which keep the Blessed Sacrament must obey the order. The Holy See leaves this matter to the local Ordinary, as may be seen from

[20] Sacred Cong. of Rites, May 18, 1878 (*Decr. Auth.*, n. 3449).
[21] Cap. xii, n. 8.

a case in which a priest requested approval for several inventions for the safer keeping of the Blessed Sacrament. The Sacred Congregation, having inspected the inventions and praised the intention of the inventor, said that the matter must be left to the local Ordinaries.[22] The interior of the tabernacle is to be either gold-plated or covered with white silk. The exterior of the tabernacle is to be covered with cloth of silk or other fabric, and it is supposed that the tabernacle stands free on the altar and can be covered entirely with a cover of the shape of the small cover for the ciborium. The Sacred Congregation of Rites insists on this, and has declared that no custom of leaving the tabernacle uncovered is legitimate.[23] No sacred vessels except those holding the Blessed Sacrament are permitted to be kept in the tabernacle (e.g., not those containing the holy oils, relics, etc.). A corporal must be placed on the floor of the tabernacle. The tabernacle may be of marble, wood, or any other material, unless the local Ordinary has forbidden certain kinds of tabernacles.

1298. A sufficient number of particles for the Communion of the sick, and of the faithful generally, shall always be kept in a pyx of solid and appropriate material. This vessel must be kept clean and tightly enclosed with its lid; it must also be covered with a veil of white silk, and ornamented in a becoming manner (**Canon 1270**).

The Sanctuary Lamp

1299. Before the tabernacle in which the Blessed Sacrament is kept should burn all day and night at least one lamp, fed either with olive oil or bee's wax. Where olive oil is not easily obtainable, the local Ordinary may according to his prudent judgment allow the use of other oils, which should, in so far as possible, be vegetable oils (**Canon 1271**).

The burning of lights as a mark of respect is very ancient among the heathen nations, as well as among the Hebrews. A Decree of the Sacred Congregation of Rites of February 23, 1916, employs practically the same terms as Canon 1271, and adds that,

[22] March 18, 1898 (*Decr. Auth.*, n. 3987).

[23] July 1, 1904 (*Decr. Auth.*, n. 4137). The tabernacle cover may be always white, or change with the color of the day (S. R. C., July 21, 1855; *Decr. Auth.*, n. 3035); during Requiem Masses chanted at the altar of the Blessed Sacrament, the cover must be purple (S. R. C., Dec. 1, 1882; *Decr. Auth.*, n. 3562). Statue of Sacred Heart not to be placed on top of tabernacle, cfr. App. III, 55, c.

as a last resort, the local Ordinary may also allow the use of electric light in place of other kinds of lights, if he finds it necessary.[24]

The Altar Breads

1300. The consecrated hosts, whether for the Communion of the faithful or for the exposition of the Blessed Sacrament, must be fresh and renewed frequently, and the old particles must be consumed as prescribed, so that there may be no danger of corruption. The instructions of the local Ordinary in this matter must be faithfully observed (**Canon 1272**).

It is evident that, before consecration, the altar bread should be fresh and clean and well made; respect and love dictate all possible care in everything connected with the great Sacrament. The Church did not want to lay down an absolute rule as to how recently made the hosts should be, because in many places it is not possible to get the hosts immediately after they are baked. The latest Decree of the Sacred Congregation of the Sacraments states that the practice of using hosts which are two or three months old, cannot be legitimately followed, and that the precept of the *Rituale* and the Code which demands that the hosts must be recently made, should be observed.[25] The term "recent" is usually explained by authors to the effect that the hosts may not be more than two or three weeks old. The same consecrated hosts cannot be reserved a long time in the tabernacle. In the Constitution "Etsi Pastoralis," Pope Benedict XIV ruled that the consecrated species should be consumed within a week or at the most fifteen days.[26] Although that Constitution was given specifically to the Italo-Greek Church in Southern Italy, it may be taken as a safe guide in any church.

Religious Teachers Must Promote Veneration of the Blessed Sacrament

1301. Those whose work it is to give religious instruction to the faithful, shall not neglect to excite in their minds devotion for the Blessed Eucharist, and shall admonish them to assist at Mass and to visit the Blessed Sacrament not only on Sundays

[24] *Acta Ap. Sedis*, VIII, 72.
[25] December 7, 1918 (*Acta Ap. Sedis*, XI, 8).
[26] May 26, 1742; Gasparri, "Fontes Cod. Jur. Can.," I, 734.

and holydays of obligation, but also as frequently as possible during the week (**Canon 1273**).

Exposition of the Blessed Sacrament

1302. In churches and oratories which have the right to reserve the Blessed Sacrament (by law or by special concession), private exposition (that is, with the *ciborium*) can be held for any good reason without the permission of the Ordinary. Public exposition, however (that is, with the *ostensorium*), may be held in all churches on the Feast of Corpus Christi and during the octave, both during Holy Mass and at Vespers. At other times, public exposition may be held only for good and serious reasons, especially a public cause, with permission of the local Ordinary, and this permission is required also in the churches of exempt religious organizations.[27]

The exposition and reposition of the Blessed Sacrament may be done by either priest or deacon. However, only the priest can give benediction with the Blessed Sacrament, and the deacon is not permitted to give it except in the case where he, according to Canon 845, takes the Viaticum to the sick (**Canon 1274**).

The rules concerning the public exposition are the same as before the promulgation of the Code. The Sacred Congregation of Rites makes it obligatory to give benediction with the Blessed Sacrament after every public exposition, before the Sacrament is replaced in the tabernacle.[27a] In the chapels of Sisterhoods, the bishop may allow public exposition as often as he thinks it proper.[28] Public exposition is forbidden without incensing—not, however, without singing.[29] The raising and lowering of the monstrance may not be done by means of mechanical devices,[30] and it is forbidden to place the Blessed Sacrament in the hands of some statue, or on the breast of a picture or statue of the Sacred Heart, or on the heart of the crucifix.[31] In the case of the private exposition in which the ciborium remains in the tabernacle (the door of which is opened), it was not allowed formerly to give benediction with the pyx, but on November 30, 1895, a Decree of the Sacred Congregation of Rites allowed this form of

[27] Concerning Corpus Christi and its octave, cfr. App. III, 55, d.
[27a] July 12, 1889 (*Decr. Auth.*, n. 3713).
[28] February 18, 1889 (*Decr. Auth.*, n. 3703).
[29] June 30, 1883 (*Decr. Auth.*, n. 3580).
[30] July 7, 1877 (*Decr. Auth.*, n. 3425).
[31] April 23, 1875 (*Decr. Auth.*, n. 3349).

benediction.[32] In the exposition with the ciborium no incense is required, but in the public exposition it is demanded at the exposition and reposition.[33]

The Forty Hours' Devotion

1303. The Forty Hours' Devotion shall be celebrated each year with the greatest possible solemnity in all parochial and other churches where the Blessed Sacrament is habitually preserved, on the days fixed with the consent of the local Ordinary. Where the exposition cannot without great inconvenience or danger of irreverence be continued day and night for forty consecutive hours, the local Ordinary should arrange that the exposition is held in a more solemn manner on certain days for several consecutive hours (**Canon 1275**).

By Decree of the Holy Office, January 22, 1914, Pope Pius X granted that, wherever the Forty Hours' Devotion could not be held as demanded by Pope Clement VIII (that is to say, for forty consecutive and uninterrupted hours, day and night), the following method could be followed and the indulgences and privileges granted for this adoration gained thereby: The Blessed Sacrament shall be exposed on the first day at any hour in the forenoon, and shall remain exposed during the day; it shall be exposed throughout all the second day and also on the third. On the third day the devotion may close either about noon or in the evening. To this devotion are granted certain indulgences (which were conceded first by Pope Pius IX, November 26, 1876, to the City of Rome) and the concession of the privileged altar granted by Pope Pius VII, May 10, 1807.[34]

For the United States the Fathers of the Second Plenary Council of Baltimore asked and obtained all the indulgences and privileges of the Forty Hours' Devotion as granted by Pope Clement VIII with permission to expose the Blessed Sacrament during the day only, and to omit the procession with the Blessed Sacrament, if the pastor could not conveniently have it.[35]

[32] *Decr. Auth.*, n. 3875.

[33] July 5, 1907 (*Decr. Auth.*, n. 4202).

[34] *Acta A. Sedis*, VI, 74. Concerning Masses during the Forty Hours' Adoration and other public expositions, cfr. App. III, 55, e–h.

[35] January 24, 1868; *Acta et Decreta Conc. Plen. Balt. II*, Decretum IV, ex Decretis Sacræ Cong. de Propaganda Fide, p. cxlix (Cfr. No. 377 of the Decrees of the Council); Wapelhorst, "Compendium S. Liturgiæ" (9th ed.), n. 220. For recent indulgences, cfr. App. III, 40, m and n.

TITLE XVI

OF THE CULT OF THE SAINTS, SACRED IMAGES AND RELICS

1304. It is a good and useful practice to invoke in suppliant manner the servants of God who reign with Christ, and to venerate their relics and images, but all the faithful shall especially cultivate a filial devotion for the Blessed Virgin Mary (**Canon 1276**).

Only those servants of God may be honored with a *public cult* who have been inserted by the authority of the Church in the list of the saints or blessed. The persons who have been canonically placed in the catalogue of saints are to receive the cult of *dulia*, and may be honored everywhere with any of the acts of that kind of cult. Beatified persons, however, cannot be venerated publicly except in the places and in the form granted by the Roman Pontiff (**Canon 1277**).

In the early centuries of the Church the Holy See had not yet reserved to itself the matter of public veneration of the servants of God. The matter was not left to the popular judgment of the faithful, but, as Pope Benedict XIV proves,[36] the bishop of the diocese examined into the cases of those who were said to have died a martyr's death. Besides, as Pope Benedict likewise shows, the acts of the martyrs were sent by the bishop of the diocese where they had died to other dioceses and to the Roman Pontiff. After the centuries of persecution, the custom developed of paying public homage also to saintly men who had died a natural death, and the bishop of the diocese watched likewise over these cases. The first case of a formal canonization pronounced by the Supreme Pontiff is said to be the canonization of St. Udalricus, Bishop of Aosta, promulgated by Pope John XV in 993.[37] Finally, Pope Alexander III (1159–1181) for the first time reserved by written law the beatification of the servants of God to the Apostolic See.[38] The Decretal of Pope Alexander was given on the occasion of a particular case, and was not very explicit. Pope Urban VIII issued a Constitution which fully

[36] *De Servor. Dei Beatific. et Beatorum Canonizatione*, lib. I, cap. 3 (*Opera Omnia Bened. XIV*, I).

[37] Wernz "Jus Decretal.," III, n. 371.

[38] *Decretal. Greg. IX*, c. 1, *De Reliquiis et Ven. Sanc.*, lib. III, tit. 45.

covered the entire question of public cult to the servants of God, and took the entire matter out of the hands of the bishops, reserving everything pertaining to beatification or canonization to the Holy See.[39]

1305. The saints of nations, dioceses, provinces, confraternities, religious organizations, and of other places and organizations, may under the conditions prescribed by law be chosen as patrons, and when the Holy See confirms such choice they are constituted as patrons; the blessed cannot be chosen as patrons without a special indult of the Holy See (**Canon 1278**).

Images Exposed for Veneration

1306. Without the approval of the local Ordinary, nobody is allowed to place, or cause to be placed, in any church (including exempt churches) or in any other sacred place, an unusual picture. The Ordinary shall not approve sacred images which are to be exposed to the veneration of the faithful if they do not agree with the approved usage of the Church. The Ordinary shall never allow in churches and other sacred places representations which are dogmatically incorrect, or are not executed with proper decency and respect, or may give to ignorant people an occasion of dangerous error. If the images exposed for public veneration are to be solemnly blessed, that blessing is reserved to the Ordinary, who may, however, delegate any priest to perform this duty (**Canon 1279**).

An illustration of what unusual pictures are is given by the condemnation of pictures of the Blessed Virgin clad in priestly vestments.[40] The Holy See watches over religious art and its productions. Thus, the Holy Office condemned the sacred images of a certain school of art, specimens of which were exhibited in the book entitled: "La Passion de Notre Seigneur Jesus Christ, par Cyril Verschaeve" (*Librairie Nationale d'art et d'histoire*, 1920). These pictures must be removed from sacred places.[41]

1307. Precious images—that is to say, those that are conspicuous for their antiquity, art, or veneration—exposed for the public veneration of the faithful in churches and public oratories

[39] July 5, 1634; Gasparri, "Fontes Cod. Jur. Can.," I, 402.

[40] Holy Office, April 8, 1916 (*Acta Ap. Sedis*, VIII, 146).

[41] March 30, 1921 (*Acta Ap. Sedis*, XIII, 197). Concerning images of the Holy Ghost, cfr. App. III, 56.

must, when in need of repairs, be restored only after obtaining the written consent of the Ordinary, who before giving the permission shall seek prudent and expert advice in the matter (**Canon 1280**).

The Church is anxious to preserve the priceless images (paintings or statues) of Christian antiquity, and also those images which God's merciful providence has used as an instrument of special favors and blessings. Wherefore, nobody may repair such images, when found in public churches and oratories, except with the written permission of the Ordinary of the place. In the churches and oratories of exempt religious organizations, these images may not be repaired without the special permission of the major superior.

Special Rules on Prominent Relics and Images

1308. Important relics and images of great value, and other relics or images which are honored in some church by great veneration of the people, cannot validly be disposed of, nor transferred perpetually to another church, without the permission of the Apostolic See. Important relics of saints or *beati* are the entire body, or the head, arm, forearm, heart, tongue, hand, leg, or that part of the body in which the martyr suffered, provided it be entire and not small (**Canon 1281**).

Important relics of saints or blessed may not be kept in private houses or in private oratories without explicit permission of the local Ordinary. Other relics may be kept with due honor in the houses of the faithful, or carried piously on their persons (**Canon 1282**).

Relics which May Be Exposed for Public Veneration

1309. Only those relics may be exposed for public veneration in any (even exempt) churches which are authenticated by document of a Cardinal, or a local Ordinary, or by another ecclesiastic who has by Apostolic indult the faculty to authenticate relics. The vicar-general cannot authenticate relics without a special mandate of the Ordinary (**Canon 1283**).[41a] The local Ordinary shall prudently withdraw from the veneration of the people those relics which he knows with certainty are not authentic (**Canon 1284**).

[41a] Concerning authentication of relics by vicar-general, cfr. App. III, 56, a.

If the documents of authentication of sacred relics have been lost through civil disturbances or for any other cause, the relics shall not be exposed for public veneration until the local Ordinary has given his decision; the vicar-general can give such approval by special mandate only. Relics venerated from ancient times are to continue to receive the same veneration, unless in particular cases it is established with certainty that they are false or supposititious (**Canon 1285**). The local Ordinary shall not permit (least of all in sermons, books, periodicals, or treatises intended for devotional purposes) the discussion of questions concerning the authenticity of sacred relics, especially when such discussions are based on mere conjectures, only probable reasons and prejudiced opinions (**Canon 1286**).

In the matter of the public cult of sacred images and relics, the Church wants the local Ordinary to have complete control in all public places of worship. The Council of Trent, therefore, ruled that the exempt religious organizations cannot expose in their churches an unusual image or a relic not approved by the local Ordinary.[42] The same was again inculcated with reference to sacred images by Pope Urban VIII.[43]

Relics Must Be Enclosed in Sealed Cases

1310. When relics are exposed, they must be enclosed in a case and sealed. Relics of the Holy Cross shall never be exposed to the veneration of the public enclosed in the same case with relics of the saints, but must be placed in a separate case. Without a special indult the relics of the blessed may not be carried in processions, nor exposed in any other churches than those to which the Holy See has given the faculty to say their Office and Mass (**Canon 1287**).

The relics of the Holy Cross have always held a special place in the veneration of the Church. Hence the rule that other relics cannot be exposed in the same reliquary or case with the relic of the Holy Cross, because the relic of the Holy Cross is entitled to more profound veneration than that to which the relics of the saints are entitled. The rule of the Code on the veneration of the

[42] Sessio XXV, *Decretum de Invocatione, Veneratione et reliquiis Sanctorum et Sacris Imaginibus.*

[43] Const. "Sacrosancta," March 15, 1642; Gasparri, "Fontes," I, 423.

relics of the blessed, as distinguished from canonized saints, is the same as in the former law.[44]

1311. Any relics of the Holy Cross which the bishop may carry in his pectoral cross, become the property of the cathedral church at his death, for transmission to the succeeding bishop. If the deceased bishop had the government of several dioceses, the relic goes to the cathedral church of the diocese in which he died; if he died outside the diocese, the relic belongs to that diocese from which he last departed (**Canon 1288**).

The regulation contained in Canon 1288 was made by Encyclical Letters of the Cardinal Vicar of Rome at the order of Pope Leo XIII, March 25, 1889, because, as the Cardinal Vicar explains, it is getting more and more difficult to provide relics of the Holy Cross for the bishops, if they are allowed to dispose of them. Usually the bishops desire to have a relic of the Holy Cross, though they are not obliged to have it, and those who secure one are now required to leave it to their successor. With the case (which possibly may be very costly) they may do as they please, for, as the Cardinal Vicar explained, the only thing that is demanded is the transmission of the relic to the successor in the bishopric.[45]

Relics May Not Be Sold

1312. It is forbidden to sell sacred relics. Ordinaries, deans, pastors and others having the care of souls shall see that sacred relics, particularly those of the Holy Cross, are not sold, especially together with other inherited property or at auction sales, nor pass into the hands of non-Catholics. Rectors of churches, and others whose duty it is, shall zealously see that the relics are not in any way profaned, or destroyed through carelessness, or kept in a disrespectful manner (**Canon 1289**).

The Sacred Congregation of Indulgences and Relics has forbidden the purchase of relics even for the good purpose of rescuing them from the hands of some storekeeper who exposes them for sale. If anyone notices that relics which seem to be genuine are for sale in some store, he should inform the local Ordinary that he may take steps to stop this insult to religion.[46]

[44] Sacred Congr. of Religious, Sept. 27, 1659, and April 17, 1660 (*Decr. Auth.*, nn. 1130 and 1156).

[45] *Collectanea de Prop. Fide*, II, n. 1699.

[46] December 21, 1878 (*Decr. Auth.*, n. 443).

TITLE XVII

OF SACRED PROCESSIONS

1313. By the term sacred processions are meant the solemn supplications which are made by the faithful marching in order under the leadership of the clergy from one sacred place to another for the purpose of promoting the devotion of the people, or to commemorate God's benefits and to thank Him, or to implore divine help. *Ordinary* processions are those held on fixed days of the year according to the rules of the liturgical books or the custom of the churches; *extraordinary* those appointed on other days for other public causes (**Canon 1290**).

Processions are a very natural manifestation of the feelings of the multitude, who thus express their joy, or grief, or fear. Transferred into the field of religion, they represent the outpourings of the religious feelings of the people. The processions at the transfer of the bodies of saints, the procession on the feast of St. Mark, and those on the Rogation Days before the Ascension of our Lord, are very ancient.[47]

Corpus Christi Procession

1314. Unless immemorial custom or the circumstances of places in the prudent judgment of the bishop demand otherwise, there shall be but one solemn and public procession through the streets of a town or city on the feast of Corpus Christi, and this should be conducted by the church first in dignity. In this procession must take part all the secular clergy and the religious communities of men, even the exempt religious, and the confraternities of laymen. Regulars who live perpetually in strict enclosure, and those who are more than three miles from the town or city, are not bound to take part in the procession. The other parishes and churches, secular or religious, may during the octave institute their own processions outside their church; where there are several churches, the local Ordinary shall appoint a day for each and the hour and the course of each procession (**Canon 1291**).

There were no processions with the Blessed Sacrament in the

[47] Wernz, "Jus Decretal.," III, n. 565.

early days of the Church. After the establishment of the feast of Corpus Christi by Pope Urban IV,[48] the procession with the Blessed Sacrament on that feast was rapidly introduced everywhere. The Council of Trent solemnly approved of the procession and condemned the opinion of those who said that such procession was improper.[49] In the United States where the Catholics generally live among an exceedingly large non-Catholic population, public religious processions of any kind are rare. Permission can be obtained without much difficulty in most places, and adequate police protection would be available, but it is generally not thought advisable to have public processions. The Corpus Christi procession is usually confined within the walls of the churches. Among the notable public processions are the great Holy Name Rallies that have become annual affairs in some of our cities.

Other Processions

1315. The local Ordinary with the advice of the Cathedral Chapter (or diocesan consultors) may for a public cause order extraordinary processions at which, just as at the ordinary ones, all those spoken of in Canon 1291, § 1, must take part (**Canon 1292**).

1316. The religious, both exempt and non-exempt, cannot hold processions outside their churches and cloisters without the permission of the local Ordinary, except in the case mentioned in Canon 1291 (**Canon 1293**).

This Canon has reference to churches of religious to which no parish is attached, for if they have a parish they are entitled to hold the ordinary processions demanded or allowed by the liturgy. Within the church and the church yard they may hold processions, and, if there is no church yard or cloister around the church, they may go outside the church but must keep close to the church building.[50]

1317. Neither a pastor nor anyone else is allowed without permission from the local Ordinary to introduce new processions or to transfer or abolish the usual ones. At the processions

[48] *Clementinæ*, c. unicum, *De Reliquiis et Veneratione Sanctorum*, lib. III, tit. 16. Blessed Sacrament in procession not to be put on vehicle, cfr. App. III, 57, b. For new indulgences, cfr. App. III, 40, n.

[49] Sessio XIII, *De Eucharistia*, cap. 5, can. 6.

[50] Sacred Cong. of Rites, September 28, 1658 (*Decr. Auth.*, n. 1096).

proper to any church all the clergy attached to that church must be present (**Canon 1294**).

Stopping all abuses that may have crept in, the Ordinaries shall see that the processions are performed in orderly fashion, and with the modesty and reverence which are so proper to such pious and religious acts (**Canon 1295**).[50a]

TITLE XVIII

OF SACRED FURNISHINGS

1318. Sacred furnishings, especially those which must in accordance with the liturgical laws be blessed or consecrated and are used in the public worship, are to be carefully preserved in the sacristy of the church, or in some other safe and decent place, and must not be used for profane purposes. As prescribed by Canon 1522, §§ 2–3, an inventory shall be made and carefully kept of all sacred furnishings. The material and form of sacred furnishings must be in conformity with the liturgical laws, with ecclesiastical tradition, and as closely as possible with the laws of sacred art (**Canon 1296**).

Those who are, by the law of Canon 1186, obliged to attend to the repairs of the church edifice, must also provide the furnishings needed for divine worship, unless other provisions have been made (**Canon 1297**).

Ownership of Sacred Furnishings of a Deceased Cardinal

1319. The sacred furnishings and all other objects permanently devoted to divine worship in the possession of a deceased Cardinal who had his domicile in the City of Rome, though he was a suburbicarian bishop or an abbot *nullius*, become the property of the Papal sacristy, no matter by what kind of revenue they were acquired, unless the Cardinal has donated or willed them to some church, public oratory, pious place, or to an ecclesiastical or religious person. His rings and pectoral crosses, even those with sacred relics, are excepted from this rule of seizure by the Papal sacristy. It is to be desired that the Cardinal who wants to make use of the faculty to donate or will his sacred

[50a] Concerning several processions in same place, cfr. App. III, 57, a.

furnishings, should leave at least a part of them to the churches of which he held the title, administration or *commenda* (**Canon 1298**).

Ownership of Sacred Furnishings of a Deceased Bishop

1320. The sacred furnishings of a deceased residential bishop, even if a Cardinal, accrue to his cathedral church, with the exception of the rings, pectoral crosses, including those with relics, and all sacred furnishings of any kind which can be proved to have been acquired by the deceased bishop with other than the funds of the diocese, and have not been turned over to the proprietorship of the church. If the bishop has a pectoral cross containing a relic of the True Cross, Canon 1288 demands that the relic be transmitted to the successor.

If the deceased bishop has governed two or more dioceses in succession, or if he presided simultaneously over two or more dioceses which had been united or which were entrusted to him for permanent administration (each diocese having its own proper cathedral church), the sacred furnishings which are known to have been acquired by the funds of one only of these dioceses shall accrue to the cathedral of that diocese; otherwise they must be divided equally among the various cathedral churches, provided the revenues of the dioceses are not divided but constitute permanently only one *mensa episcopalis*. If the revenues of each cathedral are kept separate, the sacred furnishings are to be divided between the several cathedral churches in proportion to the amount of revenue the bishop has received from each diocese, and the length of time he has presided over it.

The bishop is obliged to make an inventory in authentic form of the sacred furnishings, in which account he shall accurately state when they were acquired, and point out distinctly those furnishings which he did not buy with church funds, but which were either bought with his own money or acquired by personal donation; otherwise the law presumes that all were acquired by church funds (**Canon 1299**). The rules of Canon 1299 are to be applied also to a cleric who obtained a secular or religious benefice in any church (**Canon 1300**).

The Preceding Provisions Must Be Made Binding under the Civil Law

1321. Cardinals, residential bishops and other clerics holding benefices have the obligation to take care that by last will, or other document drawn up in the form recognized by civil law, the provisions made in Canons 1298–1300 may have effect also in the civil courts. Wherefore, they shall in good time appoint, in a manner recognized by civil law, a person of unblemished character, according to the rule of Canon 380, who at their death shall take possession not only of the sacred utensils, but also of all books, documents, and all other goods belonging to the church, and found in their house, and turn them over to the proper persons (**Canon 1301**).

Care and Use of Sacred Furnishings

1322. The rectors of churches and all others to whom the care of sacred furnishings is entrusted shall carefully provide that they are preserved in good condition (**Canon 1302**).[50b]

The cathedral church must furnish the bishop gratuitously with the sacred furnishings and all the other things he needs for the celebration of Holy Mass and other pontifical functions, even when he celebrates privately, not only in the cathedral church, but also in other churches of the episcopal city or its suburbs.

If a church is very poor, the Ordinary may permit that a moderate fee be demanded of priests saying Holy Mass there for their own convenience, for the use of the sacred furnishings and the other things needed for the celebration of Mass. The bishop —but not the vicar-capitular or the vicar-general without a special mandate—has the right to determine the amount of this fee, and nobody (not even exempt religious) are allowed to demand a larger fee. The bishop should fix the amount of the fee for the whole diocese, if possible in a diocesan synod, or outside the synod with the advice of the Chapter (**Canon 1303**).

Persons Who Have the Power to Bless Sacred Furnishings

1323. The power to bless those sacred furnishings which must, according to the liturgical laws, be blessed before they are used for their purpose, is given to the following:

[50b] Concerning the form of chalices, cfr. App. III, 58.

(1) All Cardinals and bishops;

(2) Local Ordinaries who are not consecrated bishops, for the churches and oratories of their own territory;

(3) Pastors, for the churches and oratories located within their parishes, and rectors of churches for their churches;

(4) Priests delegated by the local Ordinary within the limits of the delegation and the jurisdiction of the delegating Ordinary;

(5) Religious superiors, and priests of the same organization delegated by them, for their own churches and oratories and for the churches of nuns subject to the regular superior (**Canon 1304**).

The faculty of blessing the sacred furnishings is *local*, so that the power of all the persons enumerated here (except Cardinals and bishops) can be exercised only in certain defined places or territories. Formerly the Sacred Congregation of Rites had ruled that, without an Indult of the Holy See, the bishop could not delegate the faculties of blessing furnishings which are reserved to him by the *Rituale Romanum*.[51] The Code gives him the power to delegate priests. The regular form of faculties issued to the bishops of the United States gives them further powers to delegate priests for the performing of *consecrations* (i.e., blessings which require the anointing with holy chrism, such as the consecration of altars and chalices). Without an Apostolic Indult, the bishop cannot delegate the powers attached to the episcopal order, as is explicitly stated in the law of the Decretals.[52]

Loss of Consecration or Blessing of the Sacred Furnishings

1324. Sacred furnishings that have been blessed or consecrated, lose their blessing or consecration:

(1) if they have suffered such damage or change that they have lost their original shape and are no longer fit for their purpose;

(2) if they have been used for unbecoming purposes, or have been exposed for public sale.

Chalices and patens do not lose their consecration when the gold-plating wears off or is renewed, but there is a grave obliga-

[51] April 2, 1875 (*Decr. Auth.*, n. 3343).
[52] *Decretal. Greg. IX*, c. 9, *De Consecr. Eccl. vel altaris*, lib. III, tit. 40.

tion to have the gold plating renewed when worn out (**Canon 1305**).

Of the two ways in which sacred furnishings lose their consecration or blessing, the first was commonly admitted before the promulgation of the Code. The second cause of desecration of the sacred furnishings is new in the law of the Church.[53] Formerly the Sacred Congregation of Rites had ruled that the chalice and paten lose their consecration upon the renewal of the gold plating.[54] When chalice and paten need re-plating, they should not be broken or made unfit for use, for the purpose of depriving the sacred vessels of the consecration, before giving them into the hands of the firm which does the re-plating. The Sacred Congregation of Rites has forbidden this abuse.[55] The priest should get permission from the bishop to give the sacred vessels to the business house for repairs. To facilitate matters, the bishops authorize certain firms to do the gold-plating of chalices and patens, and the priest may give to these firms chalices and patens for re-plating.[56]

The Handling of Sacred Furnishings

1325. Care must be taken that the chalice and paten are not touched by others than clerics or by those who have their custody; the same rule applies to purificators, palls, and corporals which have been used in Holy Mass and are still to be washed. The purificators, palls, and corporals used in Holy Mass shall not be given to lay persons (even though they are religious) to be washed until they have first been washed by a cleric in major orders; the water of the first washing shall be poured into the *sacrarium,* or, if there be none, into the fire (**Canon 1306**).

Are "those who have the custody of the sacred furnishings" clerics exclusively, or does that phrase include laymen and religious, Sisters or lay brothers, who have charge of the sacristy? Writing before the promulgation of the Code, Wernz says that in the course of time the ancient rigor in the matter of touching the sacred vessels was relaxed, so that lay brothers and religious,

[53] *Decretal. Greg. IX,* c. 2, *De Sacramentis non iterandis,* lib. I, tit. 16; Wernz, "Jus Decretal.," III, n. 504.

[54] June 14, 1845, and May 9, 1857 (*Decr. Auth.,* nn. 2889 and 3042).

[55] April 23, 1822 (*Decr. Auth.,* n. 2620).

[56] *Suffragium ad Decretum No. 2620* (*Decr. Auth.,* IV, p. 223).

Sisters and laymen acting as sacristans were permitted to touch the sacred vessels.[57] Blat [58] and Vermeersch-Creusen [59] apply the above phrase also to lay sacristans. The wording of the Code —"nisi a clericis *vel* ab iis, etc."—seems to indicate that others than clerics may touch them, if they have the custody of the sacred utensils.

The washing of purificators, palls, and corporals which have been used in Mass is properly the office of subdeacons, as is evident from the address of the bishop to the candidates for that order.[60] The Sacred Congregation of Rites declared that the bishop cannot empower nuns or other Sisters to do the first washing.[61] In the early centuries of the Church the deacons, together with the inferior ministers, had the duty of washing the sacred linens, and the manner how to proceed was detailed in the *Decretum Gratiani*.[62]

TITLE XIX

OF VOWS AND OATHS

Chapter I

OF VOWS

1326. A vow is a free and deliberate promise to God to perform a possible and higher good, and must be fulfilled by reason of the virtue of religion. All persons who have sufficient use of reason in proportion to the object of the vow, may make a vow unless they are forbidden by law to do so. A vow made from grave and unjust fear is invalid by law (**Canon 1307**).

The idea of promising God some special good work or sacrifice, either to move the Heavenly Father to grant some special favor, or to thank Him for favors received, or finally to show one's extraordinary desire to promote the honor of God, seems very natural to the human heart. We find reference to vows or promises throughout the pages of the Old Testament, which also

57 *Jus Decretal.*, III, n. 503, note 7.
58 *Commentarium*, III, n. 177.
59 *Epitome*, II, n. 635.
60 *Pontificale Romanum* (*De Ordinatione Subdiaconi*).
61 September 12, 1857 (*Decr. Auth.*, n. 3059).
62 c. 40, Dist. I, *De Consecratione*.

points out to us the seriousness of making a promise to God: "If thou hast vowed anything to God, defer not to pay it. For an unfaithful and foolish promise displeaseth Him" (Eccles., v. 3). That the object of the vow must be possible to the one making the pledge to do it, and that it must be something which tends to the honor of God (*bonum*), is evident, for otherwise the vow would not honor God, but would rather be an insult. As nobody can reasonably promise anything unless he knows the object of his promise, one's knowledge must be in proportion to the object promised. The very nature of the vow demands that one be free—not forced to make the promise by the violence or threats of other persons. The Code says that one must be free from "unjust" fear. May anyone justly force another to make a vow? If a person is free to make or not to make a vow, is it not an injustice to interfere with his liberty by threatening or otherwise inducing him against his will to make a vow? If someone obliges oneself to make a vow (e.g., in the former Canon Law, if the wife gave her husband leave to join a religious community, she could be obliged by the bishop to make a vow of chastity), the obligation can be urged. With reference to the question of force and fear in the making of a vow, commentators on the Code discuss the distinction between unjust fear which is the *cause,* and unjust fear which is the *occasion* of the making of the vow. The line of demarcation between cause and occasion is by no means easy to determine in a practical case. Authors say that, when the unjust fear is the *cause* of the vow, it is no vow at all; but that the vow is valid, if the fear is the *occasion* merely of the taking of the vow.[63] It seems to us that God does not want an offering on the part of man unless it is made with absolute freedom, for the human sense of propriety and fairness would prompt us to refuse an offering made to us by a person who was not fully free in his action. If that sense of propriety of the human heart is right, we may safely assert that God thinks the same way.

Terminology in the Matter of Vows

1327. A vow is called *public,* if it is accepted in the name of the Church by a legitimate ecclesiastical superior; otherwise

[63] Vermeersch-Creusen, "Epitome," II, n. 637.

it is *private.* A vow is called *solemn,* if recognized as such by the Church; otherwise it is *simple; it is reserved,* if dispensation from it can be given only by the Holy See. A vow is *personal,* if an act of the person making the vow is promised; *real,* if some object is promised; *mixed,* if it partakes of the nature of both personal and real (**Canon 1308**).

The vows in religious communities approved by the competent ecclesiastical authority are public vows, because the superior or superioress is entitled by the law of the Church to accept the vows in the name of the Church. The distinction between solemn and simple vows is not one of the essence of the vows as such, but rather a distinction as to the juridical effects of these vows, for Pope Boniface VIII states in one of his Decretals that the solemnity of the vows is created (literally "invented") exclusively by the law of the Church.[64] Canon 1309, which will be discussed presently, states what vows are reserved to the Holy See. *Personal* vows imply an act on the part of the one making the vow (e.g., to fast on certain days, to say certain prayers, to be obedient to the religious superiors, etc.); *real* vows imply that something real is promised (e.g., the donation of land or other real or personal property to some good cause); a vow is *mixed,* if besides giving the property the person also promises to perform some personal good work (e.g., labor, prayer, etc.).

Reserved Vows

1328. Only two private vows are reserved to the Holy See: the vow of perfect and perpetual chastity and the vow to enter a religious organization in which solemn vows are taken, provided these vows were made unconditionally and after the completion of the eighteenth year of age (**Canon 1309**).

The Code speaks of *private* vows only in this chapter on vows; the vows made in religious communities approved by the Church are public vows, and these are discussed by the Code in its treatise on religious. To ascertain who has the power to release from these vows, one must consult the constitutions of the organizations concerned. Among reserved vows before the promulgation of the Code there were (besides the two mentioned in Canon 1309) also the vows to make a pilgrimage to the tomb

[64] *Liber Sextus,* c. unicum, *De voto et voti redemptione,* lib. III, tit. 15.

of the Holy Apostles at Rome, to the Holy Land, and to the tomb of the Apostle St. James at Compostella in Spain. All these are enumerated by Pope Sixtus IV in his Constitution "Etsi Dominici."[65] That the vows were reserved to the Holy See only when they were made *absolutely* (that is to say without any conditions), was the teaching of canonists before the Code became law. The age required by the Code to make a vow reserved to the Holy See, is new. The power to release from other private vows is treated in Canons 1312 and 1313 of the Code.

Extent of the Obligation of a Vow

1329. A vow, as such, imposes an obligation on nobody except the person who makes it. The obligation of a *real* vow descends to the heirs, and so does the *mixed vow* in so far as it is *real* (**Canon 1310**).

As a vow is a strictly personal affair, nobody can by his vow put the obligation of the vow on another. Thus, if a mother makes a vow to offer her child to the service of God, the child is not affected by that vow, and does not lose his liberty in the choice of his state of life. In Europe there have been instances where a town or city (that is, a representative majority of the people) made a vow to keep certain days as holydays of obligation, or to keep fast and abstinence on certain days, and this was done with the approval of the bishop of the diocese. The question arose whether all the people of such a town are bound, and whether the obligation descends to future generations. The Holy See answered that only those people who actually made the vow are bound by it, and that the obligation does not descend to future generations.[66]

The obligation of a *real* vow is considered by the Church to attach to one's goods and property. Wherefore, at the death of the person who had attached this burden to his property, the heirs who succeed him in the possession of his goods and property are under obligation to fulfill the vow. There is a difference of opinion about the nature of the obligation of the heirs—that is, whether the binding force comes under the virtue

[65] *Extravagantes Communes*, c. 5, *De pœnitentiis et remissionibus*, lib. V, tit. 9.

[66] Sacred Cong. of Rites, November 19, 1650 and June 23, 1703 (*Decr. Auth.*, nn. 932 and 2113).

of religion or of justice. This controversy existed even before the Code, because also formerly a *real* vow was considered to attach to the property of the person making the vow. The Code states that the obligation of the vow descends to the heirs, and since it is certain that the obligation arises from the virtue of religion, it follows that by the same virtue the heirs are bound to fulfill the obligation. For this reason the Code says that a vow *ratione sui* (by reason of itself) obliges the person only who makes the vow, but, *ratione objecti cui inhæret obligatio* (by reason of the object to which the obligation attaches), it can bind others.[67] The same is to be said concerning a *mixed* vow in reference to the part that is *real*.

Various Ways in Which the Obligation of a Vow Ceases

1330. The vow ceases in the following cases: when the time expires which was attached to the vow for the ending of the obligation; by substantial change of the matter promised; by non-verification of the condition upon which the vow depended, or by cessation of the final motive from, or the purpose for which the vow was made; by annulment, dispensation, or commutation (**Canon 1311**).

The time may be made a condition in one's vow in such a manner that one intends to bind oneself for a specified time only, and in such a case the vow ceases with the lapse of the specified time. A substantial change in the matter promised (whether that matter is the offering of certain goods or the performance of personal acts), may amount to a moral impossibility to fulfill the vow. If a vow is made to depend on a condition—if, for instance, one vows to give a hundred dollars to the poor if he gets the position for which he has applied, but fails to get it—the vow does not hold because the condition is not verified. Similarly, if the final motive, or the only purpose, of the vow ceases, the vow ceases also; for instance, one vows to say five decades of the rosary daily until one's mother has regained her health; if she gets well, or if she dies, the obligation ceases. These reasons for the cessation of the vow are inherent in the nature of the human act; the other three causes for which a vow ceases, namely, annulment, dispensation, commutation, are

[67] Vermeersch-Creusen, "Epitome," II, n. 641.

extrinsic causes for the cessation of a vow; they are spoken of in the following three Canons of the Code.

Annulment of Vows

1331. He who legitimately exercises the domestic power over the will of the person making a vow, can validly annul his or her vows, and for good cause also licitly, so that the obligation never revives afterwards. A person who has indeed no power over the will of the one making the vow, but has power over the matter of the vow, can suspend the obligation of the vow for such time as the fulfillment of the vow would be to his detriment (**Canon 1312**).

The domestic power (*potestas dominativa*) is the power of a father or a master over the members of the family or household. That power is natural and inherent, not created by the will of man such as is, to a certain extent at least, the public or governmental power. The power of the person who has domestic power to annul all vows of his subjects is to be derived from ecclesiastical law rather than from the natural law, for the arguments of authors who ascribe this power to the natural law are not convincing. In man's relation to God, and in his responsibilities towards the Creator, a child who has just come to the age of discretion is on the same footing as any free and independent person. Where there is question of a vow that interferes with the service or other duties which a member owes to the head of the family, one may rightly say that the natural law excludes such a vow, because it is beyond the power of the subject to promise something to which another has a legitimate claim. There is no general law of the Church which gave the head of the family the power to annul all vows of members of the family, but the chapter which the *Decretum Gratiani* took from a particular council [68] has in the course of time won universal recognition. According to this Decree of Gratian, the father can annul the vows which his children make before the age of puberty. The Code amplifies the domestic power by placing no restriction of age at all; it simply rules that those who have domestic power over the will of others can annul the vows of their subjects. Nevertheless, one must conclude from

[68] c. 2, C. XX, qu. 2.

Canon 89 that the children of a family are subject to the domestic power merely during their minority (before they are twenty-one years of age), for, when they are of age, they have the free exercise of their rights. In religious organizations the professed members are by the law of the Church placed under the power of the legitimate superior or superioress to such an extent that, according to the common opinion of canonists, the superior can annul their private vows.[69]

1332. A limited power to suspend the obligation assumed by private vows is given by the Code to those who have power over the subject matter of the vow. Thus, persons who are of age and have therefore the free exercise of their rights, but who have made agreements for service in a family or a business house, have given to another party certain rights over them. If such persons make vows which interfere with the rights of the other party, the latter can suspend the vows as long as they interfere with his rights.

Dispensation from Private Vows

1333. Vows which are not reserved may be dispensed for a good reason, provided the dispensation does not violate the acquired rights of a third party:

(1) By the local Ordinary, who may dispense not only his subjects but also transients;

(2) By the religious superior of an exempt clerical organization, who may dispense not only the professed religious, but also novices, and other persons who stay day and night in the religious house for reason of service, education, sickness, or as guests, as enumerated in Canon 514, § 1;

(3) By persons who have received the delegated faculty from the Holy See to dispense with vows (**Canon 1313**).

The Code speaks of the power of jurisdiction by which the Church may, in the name of Christ and for a good reason, free from obligations due to God. The law places one restriction on the power of dispensation granted to local Ordinaries, to religious superiors of exempt organizations, and to individual priests by Papal indult: they cannot release from vows, if such a release injures the acquired rights of a third party. A promise

[69] c. 2, C. XX, qu. 4. Cfr. Schmalzgrüber, "Jus Eccl.," VII, 148.

made to a third party and accepted by him may be confirmed by a vow. From this kind of a vow release can be granted by the Holy See alone, for the Supreme Pontiff can, in virtue of his power of eminent domain, take away the rights of an individual, when such rights are based on, or intimately connected with, religion. On this point there has been some dispute as to the power of the Supreme Pontiff in a case where the goods or rights in question are not ecclesiastical goods. Nevertheless, in view of the intimate connection of these rights with a matter over which the Supreme Pontiff has power, the right seems to be merely accessory, and therefore "accessorium naturam sequi congruit principalis." [70]

1334. The power of the local Ordinary extends not only over the subjects of his diocese (that is to say, over those who have in his diocese a domicile or quasi-domicile), but also over strangers who visit his diocese. The latter point was disputed before the promulgation of the Code. The local Ordinary can delegate the power of dispensing from non-reserved vows because it is an ordinary power (cfr. Canon 199). The same is to be said of the power of religious superiors of exempt clerical organizations with reference to the persons over whom the power of dispensation is granted them by the Code. Since the Code uses the term "superiors" without any limitations, local superiors are included. By concession of the Holy See, priests may be authorized to dispense from vows. This faculty has been frequently given to priests individually, and has also been given, by way of a permanent privilege, to the confessors of some religious organizations. "From the *Compendia Privilegiorum* of the Dominicans, Franciscans, Carmelites, and Jesuits," says Reiffenstuel, "it is evident that their confessors can release from all non-reserved vows." [71] These privileges still remain since it is not certain that even privileges acquired by communication at a time prior to the promulgation of the Code are revoked by Canon 613.[72]

Commutation of Vows

1335. A good work promised in a non-reserved vow may be commuted to a better, or an equal one, by the individual him-

[70] *Regula Juris 42 in Sexto*, in *Liber Sextus Bonifacii VIII*, lib. V.

[71] Reiffenstuel, "Jus Canonicum," lib. III, tit. 34, n. 39.

[72] Blat, "Commentarium," III, n, 186; Vermeersch-Creusen, "Epitome," II, n. 644.

self who made the vow; but it can be commuted to a lesser work only by those to whom the power of dispensation is given in Canon 1313 (**Canon 1314**).

It has been the common opinion of canonists and moralists that a person may on his own initiative change a private, non-reserved vow by substituting a better work for the work promised. The changing of the object promised into another object or work of equal value, however, was not allowed under the former law, but now the Code grants this liberty. The faculty to change by private authority the object promised for a better or an equally good work, applies to non-reserved vows only, for Canon 1314 speaks exclusively of non-reserved vows. Vermeersch-Creusen hold that, even in reserved vows, one may on one's own initiative change the promised work for one that is evidently better. This is not certain, for under the old law canonists did not agree on the question whether one could change by private authority reserved vows into something better.[73] The faculty to dispense from vows includes the power to commute vows.

Vows Made Before Profession in a Religious Community

1336. Vows which were made before profession in a religious community are suspended as long as the person remains in the religious organization (**Canon 1315**).

Before the Code, it was certain that all private vows made before solemn profession in a religious order were wiped out by the solemn profession, and this doctrine was based on the law of the Decretals.[74] Simple profession did not remove or suspend the obligation of previous vows, unless the laws of a particular organization gave such force to its simple vows. Thus, Lehmkuhl states that the simple vows in the Society of Jesus suspend private vows. The Code modifies the former law in two points: first, by denying to any religious profession (solemn or simple) the power to annul permanently all former vows; secondly, by extending the suspension of private vows to both solemn and simple vows. There is no doubt, however (as Ver-

[73] Vermeersch-Creusen, "Epitome," II, n. 645; Reiffenstuel, "Jus Can.," lib. III, tit. 34, n. 44.

[74] *Decretales Greg. IX*, c. 4, *De voto et voti redemptione*, lib. III, tit. 34.

meersch-Creusen remark), that the person who makes profession of any kind of vows in a religious community can, by his will and intention, commute all his private vows into the religious profession under the general rule of Canon 1314 concerning the commutation of vows.[75]

Chapter II

OF OATHS

1337. An oath, which is an invocation of the divine name in witness of the truth, may not be taken except with veracity, prudence, and justice. An oath which the Canons of the Code demand or permit, cannot validly be taken by proxy (**Canon 1316**).

To call upon God to witness the truth of one's testimony or statements, is a very ancient practice, and was indeed in vogue long before the Christian religion came into existence. The value of the oath to prove facts or statements depends to a great extent on the character of the person taking the oath. It may be said that a person with an average amount of faith in God is moved by an oath to be more truthful and exact in his statements, while he might not be so scrupulous to tell the truth if it was merely a question of deceiving men.

An oath must be truthful; it must be taken with discretion (not lightly for any trifling affair), and it must be just (that is to say, morally right). The positive rule of the Code demands that an oath be taken personally, whenever the Canons require or permit the taking of an oath. In itself, an oath certainly may be taken by proxy.

Effect of Oaths

1338. The person who has freely sworn to do something, is bound by a special obligation of religion to accomplish what he has promised under oath. An oath extorted by violence or grave fear is valid, but a release from it may be given by the ecclesiastical superior. An oath, taken without violence or deceit, by which a person renounces some private good or favor given him by law itself, must be observed whenever it does not involve the ruin of the soul (**Canon 1317**).

[75] *Epitome*, II, n. 646.

If the taking of the oath is a human act (that is to say, taken with due knowledge and at least the essential freedom of the will), the oath is valid, though the person was intimidated and took the oath only because of threats and fear. Nevertheless, a person who was unjustly intimidated has been wronged, and therefore the Code provides that the ecclesiastical superior may release from such oaths. The reader will notice that, in Canon 1307, the Code stated that vows made out of grave fear unjustly inflicted are automatically invalid. Oaths made under the same circumstances are not invalidated by the Code. The same difference between vows and oaths existed in the former law, and Reiffenstuel explains this difference by the fact that vows are not taken so frequently, and there is thus not the same danger that one would claim his vow to be invalid because of force or fear; on the other hand, oaths are often demanded in law, and, in order to prevent unfounded claims of invalidity, the law does not declare them *ipso facto* void, but wants the force and fear proven by the one who took the oath, whereupon the superior will grant the release.[76]

The last part of Canon 1317 modifies the principle of the Code which generally upholds the validity of oaths made out of grave fear unjustly inflicted, for, if one renounces a private good or favor granted by the law itself, renunciation by oath is not valid unless it is made freely, without violence or deceit.

Nature of Promissory Oath

1339. A promissory oath partakes of the nature and conditions of the act promised by oath. If an act which involves directly the injury of others, or prejudices the common weal or one's eternal salvation, is confirmed by an oath, the act does not thereby acquire any justification (**Canon 1318**).

Since the oath follows the nature of the act to which it is added, a promise under oath is invalid if the promise is inadmissible. Moreover, all circumstances and conditions which invalidate a promise invalidate also the oath attached to such promise. An oath cannot be made a bond of iniquity, as the law of the Decretals puts it.[77] Hence, any acts which are

[76] Reiffenstuel, "Jus Can.," lib. I, tit. 40, nn. 58 and 59.
[77] *Liber Sextus*, c. 1, *De consuetudine*, lib. I, tit. 4.

opposed to a duty towards God or our neighbors (individually or as a society) or to the good of one's own soul, cannot be the subject of a promissory oath, and if by mistake or malice they are made the subject of such an oath, the oath is null and void.

Cessation of a Promissory Oath

1340. The obligation assumed by a promissory oath ceases:

(1) if it is remitted by him in whose favor the oath was made;

(2) if the object promised by oath has changed substantially, or if changed circumstances have made the oath either sinful, or altogether a matter of indifference, or finally an obstacle to a higher good;

(3) if the final purpose, or condition under which the oath was taken, fails;

(4) by annulment, dispensation, or commutation, as specified by Canon 1320 (**Canon 1319**).

The Code stated above (in Canon 1318) that in a promissory oath the promise is primary and the oath secondary, and that the oath shares in the nature and conditions of the promise. Canon 1319, nn. 1–3, is an application of this principle. The manner in which the authority of the Church releases from a valid promissory oath, is indicated in Canon 1319, n. 4, and is further discussed in Canon 1320.

Annulment, Dispensation, and Commutation of Promissory Oaths

1341. Persons who have the power to annul, dispense or commute vows, have the same power also over promissory oaths; if, however, the dispensation from an oath involves an injury to others, and these persons refuse to remit the obligation, the oath can be dispensed from only by the Holy See on account of the necessity or interest of the Church (**Canon 1320**).

In the dispensation and commutation of vows the distinction between reserved and non-reserved vows has to be considered; but in the case of promissory oaths no such distinction has to be made, for the Code has no reserved oaths. When a third party has acquired a right by acceptance of the promise made to him under oath, nobody except the Supreme Authority can

release from the oath without the consent of the party who accepted the promise. Some commentators urge the right of the third party to such an extent that they regard the person making the promissory oath as bound, even though a change of circumstances makes the oath a hindrance to a greater spiritual good, provided the subject of the promise remains "aliquid honestum." They argue from Canon 542, which, in cases in which the taking of the oath is sanctioned by the law of the Holy See, declares invalid the reception into the novitiate of a religious community of an applicant who has taken an oath to serve the mission or the diocese. However, an individual exception does not destroy the general principle for the cessation of promissory oaths, as laid down in Canon 1319, n. 2.[78]

Interpretation of Oaths

1342. An oath must be strictly interpreted according to law and according to the intention of the person taking the oath—or, if the latter should act deceitfully, according to the intention of him to whom the oath was made (**Canon 1321**).

In interpreting an oath, one must adhere closely to the words by which the oath was expressed, and not extend them beyond their plain meaning. If the meaning of words used is doubtful, the intention ought to be considered. The rules of law about oaths are understood to govern every oath. It is evident that nobody can make a valid oath to do something forbidden by law. If a person renounces a favor which the law grants to him personally, and he does so with full knowledge of his right and by his own free will, he is bound by the oath, as Canon 1317 declares. In virtue of Canon 72, a private individual may not renounce a privilege granted to a community, dignity or place.

If a person acts deceitfully in confirming by oath something in which a third party is concerned (for instance, a contract), the intention of the one to whom the oath was made prevails, on the supposition that his intention was manifested to the other party either explicitly or implicitly by the nature of the agreement. Likewise, if the legitimate authority demands a statement under oath, the person taking the oath deceitfully is bound by the intention of the authority to whom the oath was made.

78 Vermeersch-Creusen, "Epitome," II, n. 653.

PART FOUR

OF THE TEACHING AUTHORITY OF THE CHURCH

1343. Christ our Lord confided to the Church the deposit of faith, in order that she, with the perpetual assistance of the Holy Ghost, might faithfully preserve and expound the revealed doctrine. Independently of any civil power whatsoever, the Church has the right and duty to teach all nations the evangelical doctrine, and all are bound by the divine law to acquire a proper knowledge of this doctrine and to embrace the true Church of God (**Canon 1322**).

It is a well-known fact attested by history that the Catholic Church has always claimed to have been appointed by Christ as the sole guardian and authorized teacher and interpreter of the religious truths taught by Christ. Dissenting sects arose soon after the departure of Christ from this world; the Church examined the teaching of the dissenters, decided whether or not their doctrine agreed with the teaching of Christ, and, if she had to condemn the teaching, she did so regardless of consequences, trusting that God will uphold the truth and give strength to those who with their whole heart embrace it despite the opposition of all the powers of the world.

1344. By the divine and Catholic faith must be believed all those truths which are contained in the Word of God as written or handed down to us, and which are, either by solemn pronouncement or by the ordinary and universal teaching of the Church, proposed for belief as divinely revealed truths. The solemn judgment in this matter is reserved to an Œcumenical Council and the Roman Pontiff speaking *ex cathedra* (that is to say, in his capacity of the supreme teaching authority). No religious teaching is to be understood as dogmatically declared and defined, unless such declaration or definition has clearly been made (**Canon 1323**).

The human mind must be disposed and willing to believe whatever God has taught mankind. To ascertain what God has taught would be a practical impossibility, if God Himself had not appointed a teacher and interpreter of His revealed truths, and had not furthermore assisted that teacher with His divine power so as to ward off all error. This is called the Infallibility of the Church, which is exercised when, either in an Œcumenical Council or through the Supreme Pontiff, she speaks on matters of faith and morality in the name of Christ and as the God-appointed teacher of mankind.

1345. It is not sufficient to avoid heretical error, but one must also diligently shun any errors which more or less approach heresy. Wherefore, all constitutions and decrees by which the Holy See has condemned and prohibited such opinions must be observed (**Canon 1324**).

Heresy consists in a stubborn denial of truths which have been defined and proposed by the Church as divinely revealed doctrines. Obedience to the teaching authority of the Church obliges her subjects to accept, not only the truths defined as revealed, but also whatever the Church ordains in virtue of her right and duty to safeguard the divinely revealed truths. If one admits that the Church has been appointed by God as the teacher of faith and morality, one must also admit that the Church has the right to forbid opinions which are dangerous to the principles of faith and morality.

1346. The faithful are bound to profess their faith publicly, whenever silence, subterfuge, or their manner of acting would otherwise entail an implicit denial of their faith, a contempt of religion, an insult to God, or scandal to their neighbor. Any baptized person who, while retaining the name of Christian, obstinately denies or doubts any of the truths proposed for belief by the divine and Catholic faith, is a *heretic;* if he abandons the Christian faith entirely, he is called an *apostate;* if, finally, he refuses to be subject to the Supreme Pontiff, or to have communication with the members of the Church subject to the Pope, he is a *schismatic.*

Catholics shall not enter into any disputes or conferences with non-Catholics—especially public ones—without the permission of the Holy See or, in urgent cases, of the local Ordinary (**Canon 1325**).

This official explanation of the terms heretic, apostate and schismatic is of importance for the correct understanding of the Canons in which these terms are employed. The question when the profession of one's faith is required in order to avoid what appears an implicit denial of one's faith, contempt of religion, an insult to God, or a scandal to the neighbor, depends largely on prudent judgment in the various circumstances. Generally speaking, there are few cases in which one has to make known his religious profession, for in the civil intercourse of people in these days it is understood that one's religion is not to be considered, though certain people try to make things unpleasant for Catholics even in the common affairs of life. Yet, it is impossible to maintain peace and charity unless religious tolerance is practised, for with the facilities of modern travel and world-wide activity Catholics intermingle with the adherents of the various Christian denominations in all the countries of the world, and must find a way of living in peace.

1347. Although they do not possess, either individually or when assembled in particular councils, infallibility in their teaching, the bishops also are truly doctors and teachers of the faithful committed to their care under the authority of the Roman Pontiff (**Canon 1326**).

TITLE XX

OF THE PREACHING OF THE DIVINE WORD

1348. The office of preaching the Catholic faith is committed especially to the Roman Pontiff for the Universal Church, and to the bishops for their dioceses. In virtue of their office, the bishops are bound to preach the Gospel in person, unless they have a legitimate excuse; in addition, they must employ, besides the pastors, the help of other qualified persons for the salutary fulfillment of their office of preaching (**Canon 1327**).

1349. Nobody is allowed to exercise the ministry of preaching, unless he has received a commission from the legitimate superior, either by special faculty or by appointment to an office to which the duty of preaching is attached by the Sacred Canons (**Canon 1328**).

It was always understood in the Catholic Church that the bishop has a personal obligation to teach the people of his diocese. As successors of the Holy Apostles, Christ's command to the Apostles to teach all nations extends also to the bishops. In a Decree passed in the Fourth Lateran Council (1215), Pope Innocent III enumerates the cases in which it becomes physically or morally impossible for the bishop to comply personally with the duty of preaching: in these cases the bishops are excused, but the Pope insists that they must at all times employ a sufficient number of capable preachers throughout the diocese.[1]

Chapter I

OF CATECHETICAL INSTRUCTION

1350. It is a proper and most serious office, especially of the pastors of souls, to provide for the catechetical instruction of the Christian people (**Canon 1329**). The pastor must: (1) at stated times each year prepare the children for the reception of the Sacraments of Penance and Confirmation by instructions over a number of days; (2) prepare the children with a truly exceptional care—preferably during Lent, if nothing stands in the way—to receive their First Holy Communion worthily (**Canon 1330**). Besides the instructions, spoken of in Canon 1330, the pastor shall not neglect to instruct more fully in Christian doctrine the children who have recently made their First Communion (**Canon 1331**).

The Code does not say that it is the *personal* duty of pastors, although it calls the duty of bishops to preach a personal one. The pastor may, therefore, employ others for the teaching of religion, but he must appoint persons who are qualified to teach religion properly. It is wrong to leave the religious instruction of the children exclusively to nuns, unless they have been specially prepared by a higher course in religion. One cannot reasonably expect the Sisters in general to be prepared for that work; only a person who specializes in the study of religion can have the necessary knowledge to teach religion. A few days of special instruction before First Holy Communion are not

[1] *Decretales Greg. IX*, c. 15, *De off. Jud. Ord.*, lib. I, tit. 31.

enough to train children properly in religion. As to the preparation for Confirmation, the bishops in the United States have in many instances an immense territory to cover, so that they cannot give Confirmation annually in every parish; but, whenever Confirmation is arranged for, special preparation of the children must be likewise provided. The pastors of parishes which have no parochial school are confronted with a grave difficulty in their efforts to impart adequate religious training to the children. The Sunday-school catechism hour is certainly insufficient. The problem can be solved only by much exertion and sacrifice on the part of the pastors of such parishes.

1351. On Sundays and other feasts of obligation the pastor must, at an hour which he judges most convenient for the attendance of the people, give catechetical instruction to the adults in discourses suited to their capacity (**Canon 1332**).

The Code is largely based on the European system of Sunday services. In the United States it is not the custom to have the sermon separated from the Mass except on some extraordinary occasion—e.g., Novenas, retreats, missions, Forty Hours' Devotion. Since the people get no regular instruction except at Holy Mass, it is important that the ten or fifteen minutes available for instruction be not consumed with all kinds of announcements. In some of the large parishes in which Masses follow one another closely, there is no instruction at all given at some Masses. If the number of parishioners is so large that the number of Masses required does not give sufficient time for instructions, such parishes should be divided, for the people must be taught their religion, and indeed cannot be expected to take an intelligent interest unless they know it. It is well known that our Catholic people read very few, if any, Catholic books on doctrinal or purely religious subjects. Where are they to get their knowledge of religion? It is remarkable under the circumstances that there is still so much interest in religion as is manifested in the material prosperity of parishes and institutions.

1352. The pastor must, if he is legitimately impeded from giving religious training to the children, employ the help of other clerics living in the parish, and also, if necessary, of devout lay persons, especially those who belong to the *Sodality of Christian Doctrine* or some similar society established in the

parish.[2] Unless excused by legitimate impediment, priests and other clerics must assist their own pastor in this most holy work, and they may be ordered to do so by the Ordinary, even under ecclesiastical penalties (**Canon 1333**).

If, in the judgment of the local Ordinary, the help of religious is deemed necessary for the catechetical instruction of the people, religious superiors, even though exempt, are obliged upon request of the same Ordinary to give catechetical instruction, either in person or through their subjects, especially in their own churches; such instruction, however, need not be given to the detriment of religious discipline (**Canon 1334**).

1353. Not only parents and others who hold the place of parents, but also the heads of a household and godparents, are bound by obligation to see that those subject to them or entrusted to their care receive catechetical instruction (**Canon 1335**). Local Ordinaries have the right to regulate everything pertaining to the teaching of Christian doctrine to the people in their diocese, and all must obey his orders—even exempt religious, when there is question of teaching non-exempt persons (**Canon 1336**).[3]

1354. By *Motu Proprio* of Pope Pius XI, June 29, 1923, a special Department of Christian Doctrine was established at the Sacred Congregation of the Council, with power to direct and promote catechetical instruction and all affairs pertaining to that subject.[4] By Letters addressed to all bishops, June 24, 1924, this Sacred Congregation requested information from the various dioceses on the manner in which the catechetical instruction of children and young people is conducted. To secure this information, it sent out a questionnaire, inquiring: (1) about parochial schools; (2) about higher Catholic schools; (3) about the religious instruction of children who attend public schools.[5] In the Apostolic Letters of Pope Pius XI to all religious organizations of men, March 19, 1924, the Supreme Pontiff deals with the studies of religious, urges that special attention be paid in the lower studies of young religious to the teaching of Christian doc-

[2] Canon 711 desires the bishop to establish the Confraternity of Christian Doctrine in every parish.

[3] *Litteræ Encyclicæ Pii X*, April 15, 1905, *De Doctrina Christiana* (*Acta S. Sedis.*, XXXVII, 613).

[4] *Acta Ap. Sedis*, XV, 327.

[5] *Acta Ap. Sedis*, XVI, 332. On teaching of catechetics in seminaries, cfr. App. III, 59, d.

trine, and strongly recommends the Roman Catechism as a text-book.[6]

Chapter II

OF SACRED PREACHING

1355. Only the local Ordinary can within his territory grant the faculty of preaching to the secular clergy and to non-exempt religious (**Canon 1337**). If a sermon is to be preached exclusively for exempt religious and their household as specified in Canon 514, the religious superior of the exempt clerical organization, who has this right according to the constitutions of his community, grants the faculty of preaching; he may give this faculty even to secular priests, and to those of another religious community, provided they have been declared qualified by their own Ordinary or religious superior. If a sermon is to be preached to others, even to nuns subject to regulars, the faculty of preaching is given even to exempt clergy by the Ordinary of the place where the sermon is to be given, but the preacher who is to address exempt nuns needs in addition the permission of the regular superior. The faculty of preaching to members of an exempt laical organization of religious is given by the local Ordinary, but the preacher cannot make use of the faculty without the consent of the religious superior (**Canon 1338**).

The various laws issued in recent times,[7] and especially the *Normae* (or Regulations)[8] on sacred preaching, are contained in the Code in condensed form. Canon 1338 modifies the former privilege of exempt religious, who, before the promulgation of the Code, could preach to the people in their own churches without the approval of the bishop, having only to ask his blessing. The Code rules that, whenever they preach to the people anywhere in the diocese, the approval of the bishop is required.

1356. Local Ordinaries shall not without a grave reason refuse the faculty of preaching to those religious who are presented by their proper superior, nor shall they without a grave reason recall the faculty once granted—especially not from all

[6] *Acta Ap. Sedis*, XVI, 133.

[7] *Sacred Cong. Episcopr. et Regular.*, July 31, 1894 (*Acta S. Sedis*, XXVII, 162); *Motu Proprio*, Pius X, Sept. 1, 1910 (*Acta Ap. Sedis*, II, 655); Benedict XV, June 15, 1917 (*Acta Ap. Sedis*, IX, 305).

[8] Sacred Consistorial Cong., June 28, 1917 (*Acta Ap. Sedis*, IX, 328).

the priests of a community at one and the same time. The law of Canon 1340, however, stands. Religious priests are not allowed to make use of the faculty of preaching granted to them by the local Ordinary without the additional permission of their superior (**Canon 1339**).

The local Ordinary and the religious superior are under grave obligation of conscience forbidden to give the faculty or permission to preach to any priest until his good moral standing and sufficiency of knowledge have been first ascertained by examination, as demanded by Canon 877. If, after granting the faculty or permission, they find that the preacher lacks the necessary qualifications, they must recall the faculty; when doubt arises as to the necessary knowledge, they must dispel this doubt by certain proofs, and even by a new examination, if necessary. If a man is deprived of the faculty or permission to preach, recourse to the higher superiors is permitted *in devolutivo*—that is to say, the order of the bishop or superior is not suspended by the appeal, and must be obeyed in the meantime (**Canon 1340**).

Preachers from Other Dioceses

1357. Priests of another diocese, whether secular or religious, shall not be invited to preach until permission has been obtained from the bishop of the place where the sermon is to be given. Unless the preacher is otherwise known to him, the bishop shall not give him the faculty to preach until he has received from his proper Ordinary a good testimonial concerning his knowledge, piety, and good character. The Ordinary giving the testimonial is bound by a grave obligation of conscience to send a truthful statement.

A timely request for the above-mentioned permission must be made by the pastor in the case of a parochial or other church subject to the pastor; by the rector, if the church is exempt from the pastor's jurisdiction; by the first dignitary of the chapter with the consent of the chapter in the case of a capitular church; by the director or chaplain in the case of a church or chapel of a confraternity. If a parochial church is simultaneously a capitular or confraternity church, the priest who by law performs the sacred functions shall apply for the permission (**Canon 1341**).

Priests and Deacons Only May Be Granted Leave to Preach

1358. The faculty or license to preach should be given only to priests or deacons, but not to other clerics, unless for a reasonable cause the bishop sees fit to grant it in individual cases. All laymen, even religious, are forbidden to preach in church (**Canon 1342**).

That women may not preach in church, we learn by ordinance of St. Paul (I Cor., xiv. 34–35; I Tim., ii. 11–12). Pope St. Leo I ruled that nobody except the priest of the Lord, whether he be monk or layman, be allowed to preach.[9] The same prohibition is repeated in the Decretals.[10] That deacons may preach is clearly declared in the ordination rite of the deacons, as prescribed by the *Pontificale Romanum*. The *Decretum Gratiani* speaks of the right of the deacon to preach,[11] and it seems that, ever since the first appointment of deacons, they exercised the ministry of the Divine Word, as we read of the deacons, Sts. Stephen and Philip.

1359. Local Ordinaries have the right to preach in any church within their own territory, not excluding exempt churches. Unless the city is very large, the bishop may forbid sermons to the people in other churches of the city at the time when either he himself preaches, or has a sermon preached in his presence on some public and extraordinary occasion (**Canon 1343**).

Preaching on Sundays and Holydays of Obligation

1360. On Sundays and other holydays of obligation throughout the year it is the duty of the pastor to preach the Word of God to the people in the customary homily, especially during that Holy Mass at which the attendance of the people is usually more numerous. The pastor cannot satisfy this obligation habitually through another priest, unless he has a just excuse approved by the Ordinary. The Ordinary may allow the omission of the sermon on certain of the more solemn feasts, and for a good reason also on some Sundays (**Canon 1344**).

The Code insists that on Sundays and holydays of obligation a sermon be preached to the people. The custom in many

[9] *Decretum Gratiani*, c. 19, C. XVI, qu. 1.
[10] *Decretal. Greg. IX*, cc. 12 and 14, *De hæreticis*, lib. V, tit. 7.
[11] c. 1, D. 25, and c. 2, D. 92.

parishes of having no preaching at all during the summer months violates the positive law of the Church, and is a breach of the natural obligation which binds priests, charged with the care of souls, to instruct the people in the faith and Christian life. Though the Code speaks of one sermon only, it is evident that this is insufficient in parishes where no regular instruction in religion is given except at the Mass on Sundays and holydays, as we remarked in commenting on Canon 1332.

1361. It is to be desired that in all churches and public oratories, where people assist at Holy Mass on Sundays and holydays of obligation, a short explanation of the holy Gospel or of some point of Christian doctrine be given to the people. If the local Ordinary has given orders concerning this matter, they must be obeyed, not only by the secular clergy but also by non-exempt and exempt religious, even in their own churches (**Canon 1345**).

Preaching in Lent and Advent

1362. Local Ordinaries shall take care that during the Lenten season—and also during Advent, if they judge it useful—more frequent sermons are given in the cathedral and parochial churches. Unless they are detained elsewhere for a legitimate reason, the canons and others belonging to the Cathedral Chapter are bound to be present at these sermons, if they are held immediately after the choir services, and the Ordinary can oblige them to be present, even by imposing penalties (**Canon 1346**).

It is the custom in many parishes in the United States to have Lenten services on two evenings every week in Lent: on one evening a sermon is preached, and on the other the Way of the Cross is usually made by priest and people. The Code apparently alludes to the daily Lenten sermon customary in the churches of Rome, but does not prescribe anything definite in the matter, leaving it to the bishop of the diocese to ordain what he judges appropriate.

Manner of Preaching

1363. In the sacred sermons should be explained above all the things which the faithful must believe and do to save their souls. The preachers of the Word of God must abstain from profane arguments and arguments too deep for the average understand-

ing of their hearers, and shall execute the evangelical ministry, not with the persuasive words of human wisdom, nor with the profane display of a vain and ambitious eloquence, but in "the shewing of the spirit and the power" of God, preaching not themselves but Christ crucified. If it should unfortunately happen that a preacher disseminates errors and scandals, he shall be forbidden to preach, to hear confessions, or to exercise any office of teaching (as Canon 2317 provides); if his preaching is heretical, proceedings shall be instituted against him according to the rules of law (**Canon 1347**). The faithful are to be zealously exhorted and admonished to attend the sermons frequently (**Canon 1348**).

Chapter III

OF SACRED MISSIONS

1364. Ordinaries shall see that the pastors arrange a mission for their parishioners at least once in ten years. The pastors, not excluding those of religious organizations, are bound to obey the local Ordinary's regulations concerning these missions (**Canon 1349**).

The mission with its systematic plan of sermons, instructions, pious exercises and prayers is a fairly recent development of religious activity in the Church. It lasts regularly for one week; although missions lasting two weeks—one week for men and one for women—or even a longer time in very large parishes, are also common. St. Vincent Ferrer and St. Bernardine of Siena are generally considered the pioneers in this work. The fact is that, ever since the time of St. Dominic and St. Francis of Assisi, many Dominican and Franciscan Friars went as itinerary preachers throughout the countries of Europe, stirring up the faith and devotion of the Christian people. In the first half of the eighteenth century, St. Leonard of Port Maurice (died 1751) was one of the most forceful missionaries that the world has ever seen, and, by Apostolic Letter of March 17, 1923, Pope Pius XI declared him patron of the missions among Catholics.[12]

1365. Ordinaries and pastors should regard the non-Catholics living in their dioceses and parishes as their wards in Jesus

[12] *Acta Ap. Sedis*, XV, 196.

Christ. In other territories the entire care for the missions among non-Catholics is reserved exclusively to the Holy See (**Canon 1350**). Nobody may be forced to embrace the Catholic faith against his will (**Canon 1351**).

TITLE XXI

OF SEMINARIES

1366. It is the proper and exclusive right of the Church to educate the men who desire to devote their lives to the ecclesiastical ministry (**Canon 1352**). All priests, especially pastors, shall see that boys who show signs of ecclesiastical vocation, are carefully preserved from the contamination of the world. They shall train such youths in piety, give them elementary instructions in the study of letters, and foster in them the seed of the divine vocation (**Canon 1353**).

1367. In every diocese the bishop shall erect in a suitable place a seminary in which, according to the resources and the requirements of the diocese, a certain number of young men may be educated for the clerical state. Every effort should be made, especially in large dioceses, to establish two seminaries—a minor seminary in which boys may study a literary course, and a major seminary for the study of philosophy and theology. If a diocesan seminary cannot be erected, or if in such a seminary a proper course in philosophy and theology cannot be given, the bishop should send the students to an outside seminary, unless an interdiocesan or provincial seminary has been established with the authority of the Holy See (**Canon 1354**).

1368. In the United States the right of the Church to erect seminaries and educate seminarians has never been questioned. Full freedom is given to all religious denominations to manage their own affairs of religion, and, though the government cannot under its Constitution favor or aid any one religion in particular the value of religious training for the promotion of the general welfare of the country has been recognized. Therefore, the various states have exempted from taxation the buildings and property devoted to education, both secular and religious. On the other hand, the entire burden of financing private educational

institutions (among which are reckoned all religious schools) is thrown on the respective Churches. In the United States the Catholics have more private schools than any other religious denomination, and it is estimated that about two million children receive their education in parochial schools, saving the country annually an expenditure of approximately one hundred and ninety million dollars. In some of the states where the Catholics are not very numerous, antagonists of religious education are trying hard to take away the right of Catholics and others to educate their children according to their faith, and are urging the passing of laws that would prohibit all private schools. Fortunately, the Supreme Court of the United States has unanimously decided that the prohibition of private schools would be an infringement on the liberty of our citizens.

1369. The Code admonishes pastors and all other priests to foster vocations for the priesthood in boys who show signs of the divine call. However, no undue influence should be used to impel a boy to study for the priesthood, for it must be his own free choice. On the other hand, parents and priests may not be indifferent to the signs of vocation by leaving such a boy unaided and without encouragement.

Seminary Tax

1370. If there are no special funds for the building and maintenance of the seminary, and the support of students, the bishop may:

(1) order the pastors and rectors of churches (even the exempt ones) to take up at stated times a collection in their churches for that purpose;

(2) impose a seminary tax in his diocese;

(3) if these means are not sufficient, he may annex some simple benefices to the seminary (**Canon 1355**).

1371. Liable for the seminary tax or assessment are the *mensa episcopalis,* all benefices (including those of regulars and those over which some one has the right of patronage), all parishes and quasi-parishes (though they have no other revenue than the offerings of the faithful), hospitals erected by ecclesiastical authority, sodalities canonically erected, church buildings that have their own revenue, and every religious house (though

exempt), unless the religious live solely on alms or have actually in their house a college for pupils or teachers for promoting the common welfare of the Church. All custom exempting from the payment of the seminary tax is disapproved, every contrary privilege whatsoever is abrogated, and no appeal will be entertained (**Canon 1356,** § 1). This assessment must be general, and the same rate must be levied on all churches and institutes subject to the tax: while it may be increased or diminished according to the needs of the seminary, the annual tax must not exceed 5 per cent of the income, and is to be lowered as the revenue of the seminary increases (**Canon 1356,** § 2).

The taxable income is that which remains at the end of the year, after all obligations and necessary expenditures have been paid. In benefices in which the holders of the benefice receive daily distributions besides the regular revenue of their benefice, the daily distributions are not taxable; if the benefice consists only of daily distributions, one-third of the amount is exempt from the tax. In parishes the offerings of the faithful are not taxable revenue of the parish, unless the parish has no other revenue than the offerings of the faithful, in which case one-third of the offerings is exempt (**Canon 1356,** § 3).

1372. In the United States the parishes have no income other than the offerings of the faithful, and in most parishes there is practically no surplus at the end of the year: whatever remains over and above the current expenditures, is usually needed to reduce the debt of the parish, or is put into a fund for the construction of some needed building. The cost of building material and construction work is so high that many thousands of dollars are needed nowadays to erect a complete parish plant of average size and in the plainest style. There is, therefore, in many parishes no taxable income in the sense of Canon 1356, § 3, for the reason that there is no real surplus. Nevertheless, the seminary must be taken care of, because it is essential to a diocese. Even in dioceses that have no seminary of their own but send their seminarians to other seminaries, funds are needed for the maintenance of these seminarians. Unfortunately, the parishes are in many instances taxed so severely that their own development is hindered, and a distressing burden is put on the pastor who is forced to make everlasting appeals for money. It is not unusual to find that the tax imposed on the parishes for various

diocesan needs amounts to fifteen per cent of the gross income of the parishes. As most of the parishes have debts to pay in addition to current expenditures, a diocesan assessment of fifteen per cent of the gross receipts seems oppressive.

Administration of the Seminary

1373. The bishop has the right to pass whatever regulations seem necessary or opportune for the proper administration, government and progress of the diocesan seminary and to enforce the faithful observance of these regulations, subject to the precepts which the Holy See may have laid down in special cases. The bishop shall frequently visit the seminary in person, shall supervise carefully the manner in which the secular and ecclesiastical sciences are taught, and shall obtain full reports regarding the dispositions, vocation, character and educational progress of the students, especially at the time of sacred ordinations (**Canon 1357,** §§ 1–2).

1374. Every seminary shall have its own statutes, approved by the bishop. These regulations shall state what things are to be done and observed both by the students and by the professors. The entire government and administration of interdiocesan or provincial seminaries shall be based on the regulations passed by the Holy See for these seminaries (**Canon 1357,** §§ 3–4).

1375. In every seminary there must be a rector to maintain discipline, professors to conduct the classes, a bursar (*œconomus*) distinct from the rector, to take charge of the household administration, at least two ordinary confessors, and a spiritual director (**Canon 1358**).

1376. Two boards of deputies shall be appointed for each diocesan seminary—one for discipline and the other for the administration of the temporal goods. Each board is to consist of two priests chosen by the bishop, with the advice of the Chapter (or the diocesan consultors). The vicar-general, priests belonging to the bishop's household, the rector of the seminary, the bursar, and the ordinary confessors, are excluded from both boards. The term of office of the members lasts for six years, and the men appointed shall not be removed without a serious cause; they may be re-appointed. The bishop is bound to consult the boards in affairs of importance (**Canon 1359**). To the offices of

rector, spiritual director, confessors, and professors of the seminary, shall be appointed men qualified for these offices, not only by their learning, but also by their virtue and discretion, so that in word and deed they may be an example for the students. As declared by Canon 891, the rector may not be confessor for the seminarians. In the execution of their offices, all must obey the rector of the seminary (**Canon 1360**).

Confessors of the Seminary

1377. Besides the ordinary confessors, other confessors should be appointed to whom the seminarians may freely go to confession. If these confessors live outside the seminary, and a student requests the rector to call one of them to hear his confession, the rector is forbidden in any way to inquire into the reason, or to show displeasure. If the confessors live in the seminary, the seminarians may freely approach them, without prejudice to the discipline of the seminary. When the question of admitting a seminarian to orders or of dismissing him from the seminary is being considered, the vote of the confessor shall never be asked (**Canon 1361**).[13]

Use of Legacies for the Education of Clerics

1378. The income derived from legacies left for the education of clerics may be used in favor of the students in the minor as well as in the major seminary, even though they are not as yet made clerics by reception of the tonsure, unless the terms under which the legacy was left to the seminary explicitly restricts the use of the money to clerics proper (**Canon 1362**).

The Council of Trent desired that the bishop should receive boys into the minor seminary at an early age (the minimum being twelve years), if they showed signs of vocation to the priesthood. Poor boys were to be educated free of charge, while boys of wealthy parents were to pay for their board and tuition.[13a] The Code does not state anything explicitly about board and tuition, but from its general provisions regarding the defraying of the expenditures of the seminary it seems to imply that the students do not pay for board and tuition. In Canon 1362 the Supreme

[13] Concerning confessors, cfr. App. III, 59, b.
[13a] Sessio XXIII, cap. 18, *De Reform.*

Authority of the Church orders that last wills and bequests of any kind, made under the general form "for the education of clerics," are to include ecclesiastical students who have not yet received the first tonsure.

Qualifications for Admission to a Seminary

1379. The Ordinary should receive into the seminary only boys who were born of legitimate wedlock, and whose character and good-will justify the hope that they will persevere and work with success in the ecclesiastical ministry. Before they are received, they must present testimonials of legitimate birth, of Baptism and Confirmation, and of good conduct and morals. Students who have been discharged from another seminary, or from some religious organization, shall not be admitted unless the bishop has first obtained information (in secret, if necessary) from the superiors and others about the reason for their dismissal and testimonials as to their morals, dispositions, and talents, and has convinced himself that there is nothing in their character which would be unbecoming to the sacerdotal state. Superiors, and others who are asked for information, are bound by a grave obligation of conscience to answer truthfully (**Canon 1363**).[14]

Studies in Seminaries

1380. In the lower grades of the seminary:

(1) religious instruction shall occupy the first place, and is to be most diligently given in a manner adapted to the age and intelligence of the students;

(2) the students shall acquire an accurate knowledge especially of the Latin and vernacular languages;

(3) in other branches of study such training shall be given as befits the general culture of the people and the status of the clergy in the place where they are to exercise the ministry (**Canon 1364**).

1381. The course of philosophy, together with other allied subjects, is to last at least two full years. The theological course must last at least four full years: besides dogmatic and moral

[14] A Decree of the Sacred Consistorial Cong., Dec. 22, 1905, absolutely forbade the bishops to receive a student dismissed from another seminary. The Code now allows the bishop to use his own judgment (cfr. *Acta Ap. Sed.*, II, 106).

theology, this course must embrace especially the study of Sacred Scripture, church history, canon law, the liturgy, sacred eloquence, and ecclesiastical chant. Lectures shall be also given on pastoral theology, with practical exercises on the method of teaching catechism to children and others, hearing confessions, visiting the sick, and assisting the dying (**Canon 1365**).[15]

1382. In the appointment of professors of philosophy, theology, and canon law, the bishop and seminary boards shall give preference, all other things being equal, to those who have received the degree of doctor from a university or a faculty recognized by the Holy See; or, in the case of religious, to those who have a similar degree from their major superiors. Philosophy and theology shall be taught by the professors absolutely according to the method, doctrine and principles of the Angelic Doctor, which must be faithfully preserved. Care should be taken to have special professors at least for Sacred Scripture, dogmatic theology, moral theology, and church history (**Canon 1366**).

1383. The Church has not fixed a plan of studies for all the seminaries of the Christian world, because it is not possible to have one universally satisfactory schedule. The Church wisely leaves it to the bishop to arrange, with the advice of the seminary boards, the plan of studies for his own diocese: they know best what is necessary or useful. However, the Code does fix certain points regarding the studies in seminaries, and these must be complied with everywhere, in so far as circumstances make it possible. The documents of the Holy See regarding seminary studies include an urgent exhortation of Pope Benedict XV to study the Sacred Scriptures, saying that it must be the foremost study of priests and candidates for the priesthood.[15a] General directions concerning seminary studies are given in a letter of Pope Pius XI to the Cardinal Prefect of the Sacred Congregation of Seminaries and Universities: these are in the nature of a detailed explanation of the few fundamental points of the Code on these studies.[16] As to church music, Pope Pius XI, by *Motu Proprio* of November 22, 1922, established a higher school of church music at Rome for the purpose of training clerics and

[15] Latin Code to be text-book in seminaries (App. III, 1).
[15a] September 15, 1920 (*Acta Ap. Sedis*, XII, 385).
[16] For this and other recent decrees on studies, management, etc., cfr. App. III, 59, a–f.

laymen in correct church music, composition, and organ-playing.[17]

1384. The Code demands at least four years of theological studies. If a dispensation is granted to ordain men before the time specified by the Code (viz., after the first semester of the fourth year), the condition attached to all such dispensations, past as well as future, is that the candidate must continue his studies after ordination until the end of the fourth year, and that he cannot before that time be employed to preach or hear confessions. The Decree is given by the Sacred Congregation of Religious and applies only to religious organizations.[18] Here may be mentioned the Letter of His Holiness, Pope Pius XI, to all religious organizations of men on the education of their students. It is not a document which ordains points of law but rather a paternal instruction of the Father of Christianity, and contains many useful and timely hints.[19]

One of the most far-reaching recent regulations affecting seminaries is the *Motu Proprio* of Pope Pius XI, which ordains that nobody shall be a professor of Sacred Scripture in seminaries unless he has taken a special course in Sacred Scripture, and has legitimately obtained the academic degrees (or at least the baccalaureate) from the Biblical Commission or the Biblical Institute at Rome.[20]

Religious Exercises of Seminarians

1385. The bishop shall see that the seminarians:

(1) say daily their morning and night prayers in common, spend some time in meditation, and assist at Holy Mass;

(2) go to confession at least once a week, and frequently receive Holy Communion with proper devotion;

(3) assist on Sundays and holydays of obligation at Solemn Mass and Vespers, serve at the altar and practise the sacred ceremonies, especially at the cathedral, if this, in the bishop's judgment, can be done without detriment to discipline and studies;

(4) make a retreat annually for several continuous days;

(5) attend at least once a week an instruction on the spiritual

[17] *Acta Ap. Sedis*, XIV, 623.
[18] October 27, 1923 (*Acta Ap. Sedis*, XV, 549).
[19] March 19, 1924 (*Acta Ap. Sedis*, XVI, 133–148).
[20] April 27, 1924 (*Acta Ap. Sedis*, XVI, 180).

life, which should be closed with a pious exhortation (**Canon 1367**).

Exemption of the Seminary

1386. The seminary shall be exempt from parochial jurisdiction. The rector of the seminary or his delegate shall discharge the office of pastor for all persons in the seminary, except in connexion with marriage and subject to the precept of Canon 891. These rules concerning the exemption obtain in all seminaries, unless the Holy See has ruled otherwise for particular seminaries (**Canon 1368**).

Canon 891 forbids the rector to hear the confessions of students living in the seminary, unless a student voluntarily asks him in some individual case.

Duties of the Rector of the Seminary

1387. The rector of the seminary and other officials under his authority shall see that the seminarians faithfully observe the statutes approved by the bishop and the plan of studies, and that they become imbued with a truly ecclesiastical spirit. The principles of true Christian politeness shall be frequently inculcated, and the officials shall by their own example prompt the seminarians to cultivate these principles. The students shall be also urged to observe the laws of hygiene, and to cultivate cleanliness of dress and person, courtesy, moderation and gravity. The rector shall guard vigilantly that the professors attend properly to the duties of their office (**Canon 1369**).

Whenever seminarians live outside the seminary for any reason, the precept of Canon 972 shall be observed (**Canon 1370**). Canon 972 demands that students, who for a legitimate reason live outside the seminary, shall be entrusted to the care and surveillance of a pious and capable priest.

1388. Disorderly, incorrigible, or seditious students, and those who because of their character or temperament do not seem suitable candidates for the clerical state, shall be dismissed from the seminary. Students who progress so slowly in their studies that there is not much hope that they will acquire sufficient learning, shall also be dismissed. If a seminarian should be guilty of an

offense against good morals or the faith, he shall be summarily discharged (**Canon 1371**).[21]

Seminaries in Charge of Religious Organizations

1389. The bishop may entrust his diocesan seminary to the care of some religious organization. As the common law does not contain any regulation regarding the agreement between the bishop and the religious organization, the respective rights of the bishop and the religious must be fixed by mutual agreement. If the contract drawn up between the two parties contravenes the laws of the Code on seminaries (if, for instance, the two diocesan boards presiding over discipline and finances are dispensed with), the permission of the Holy See is required for the agreement. By Brief of December 23, 1921, Pope Benedict XV granted to the Sulpician Fathers the privilege of accepting the charge of seminaries and exercising the independent administration of these institutions in temporal as well as in spiritual affairs, without the intervention of the diocesan boards. They shall, however, make a yearly report of the financial standing of the seminary to the bishop and two canons of the cathedral chapter.[22] In the United States a few seminaries are conducted by religious organizations for no diocese in particular, and any bishop who has no seminary of his own may send his seminarians to these institutions. While the management of these seminaries is entirely in the hands of the religious organization, the local Ordinary has in virtue of Canons 1381 and 1382 the right to watch over the teaching and moral conduct of such schools and to visit them for that purpose.

[21] A great deal of useful information for rectors and other officers of the seminary is to be found in Micheletti's works on seminaries—notably "Constitutiones Seminariorum Clericalium," "Commentarium in S. C. EE. et RR. Decretum et Normas pro Reformatione Seminariorum," "De Rectore Seminariorum Clericalium," "De Moderatore Spiritus in Sacris Seminariis."

[22] *Acta Ap. Sedis*, XIV, 37.

TITLE XXII

OF SCHOOLS

1390. The education of all Catholics from their childhood must be such that not only shall they be taught nothing contrary to the Catholic faith and good morals, but religious and moral training shall occupy the principal place in the curriculum. Not only the parents, as mentioned in Canon 1113, but in addition all those who take their place, have the right and the most serious obligation of providing for the Christian education of the children (**Canon 1372**).

In every elementary school the children must, according to their age, be instructed in Christian doctrine. The young people who attend the higher schools are to receive a fuller religious training, and the bishops shall see that this training is given by priests conspicuous for their zeal and learning (**Canon 1373**).

1391. Catholic children shall not attend non-Catholic or undenominational schools, nor schools that are mixed (that is to say, open also to non-Catholics). The bishop of the diocese alone has the right, in harmony with the instructions of the Holy See, to decide under what circumstances, and with what safeguards against perversion, the attendance of such schools by Catholic children may be tolerated (**Canon 1374**). The Church has the right to establish schools of every grade—intermediate and higher schools as well as elementary (**Canon 1375**).

1392. The Third Plenary Council of Baltimore deals fully with the school question in Chapters I and II, Title VI (*De Catholica Juventutis Institutione*). The right of the Church to have schools for the Christian education of her children is vindicated there, and various Papal documents—notably the Brief of Pope Leo XIII, February 8, 1884, to the French Bishops—are quoted by the Council. The regulations of Canon 1374—that Catholics may not send their children to any other than Catholic schools, that the bishop alone is to decide when the observance of this precept is not possible or not practicable, and that he has the right to ascertain whether sufficient provision is made otherwise in the case for the religious instruction of the children—are taken by the Code from the above-mentioned letter of Pope Leo XIII to the Bishops of France. The Third Council of Baltimore abso-

lutely commands that Catholic schools be erected in every parish, and that the bishop shall obey this command, tolerating no excuse from non-compliance with this order of the Council except impossibility because of the small number of Catholics and their inability to contribute sufficient funds for the erection and maintenance of parochial schools. A pastor who does not obey the orders of the bishop to establish a parochial school, is to be removed from the parish.

The enemies of the Catholic Church understand very well that Catholic schools are the most effective means for the preservation of the Catholic faith. Consequently, they deplore the liberty that the United States grants to all religions to have their own schools, and they are working at present with a diabolical hate to incite the great mass of indifferent and tolerant non-Catholic citizens to vote against private schools—which means nothing else than Catholic schools, for the private schools of the other Christian Churches are few. In some states they have succeeded in passing a law against private schools, but the Supreme Court of the United States has declared such a law unconstitutional.

Catholic Universities and Academic Degrees

1393. The canonical erection of a Catholic university or faculty is reserved to the Holy See. Even though it is in charge of some religious organization, it must have its statutes approved by the Holy See (**Canon 1376**). Academic degrees which are recognized in canon law can be conferred only by persons to whom this power has been granted by the Holy See (**Canon 1377**). Doctors, who have received their degree legitimately, have the right to wear outside of sacred functions a ring with a stone and the doctor's biretta, and in the conferring of the various offices and ecclesiastical benefices the bishop should give preference, all other things being equal, to those who have obtained the doctorate or licentiate (**Canon 1378**).

The Code speaks of two things, a Catholic university and a Catholic faculty. In Europe there are State Universities which have a Catholic faculty for theology by agreement between the Church and the State. In the United States we have the Catholic University at Washington, which has received from the Holy See the privilege to confer ecclesiastical degrees. The Holy See does not for the present want to confer the title and faculties of

an Ecclesiastical University on any other Catholic school in the United States, but desires the bishops to work in unison for the perfection of the present Catholic University at Washington, as is stated in a letter of His Holiness, Pope Pius XI, to the Hierarchy of the United States.[23]

1394. If there are no Catholic elementary or secondary schools, spoken of in Canon 1373, it is the duty especially of the local Ordinaries to see that they shall be established. Likewise, if the public universities are not imbued with the Catholic doctrine and spirit, it is to be desired that a Catholic University be erected in the nation or province. The Catholics should not refuse to aid according to their means in the building and maintenance of Catholic schools (**Canon 1379**).

1395. It is desirable that the local Ordinaries send pious and gifted clerics to the lectures of some university or faculty founded or approved by the Church, in order that they may there pursue especially the studies of philosophy, theology, and canon law, and obtain academic degrees (**Canon 1380**).

The Holy See allows bishops to send priests to non-Catholic universities when the necessity or utility of the diocese requires it, but the Sacred Consistorial Congregation has ruled that the bishop shall not send clerics until after their ordination to the priesthood, and that he shall exercise special vigilance over such students. The same regulation applies to the superiors of religious organizations, who may send their subjects to such schools.[24]

Bishop's Right of Supervision over Schools

1396. The religious teaching of youth in all schools whatsoever is subject to the authority and inspection of the Church. The local Ordinaries have the right and duty to see that nothing is taught or done contrary to faith or good morals in any of the schools of their territory. They have, moreover, the right to approve the teachers of religion and the books, and to demand that, in the interest of religion and morals, teachers and books be removed (**Canon 1381**).

[23] April 25, 1922 (*Acta Ap. Sedis,* XIV, 423). In the document of Pope Leo XIII, March 21, 1889, by which the Catholic University of America was erected as an Ecclesiastical University, it is stated that no other Catholic University is to be established without consulting the Holy See (*Acta S. Sedis,* XXI, 517). Concerning academic degrees, cfr. App. III, 59, e and f.

[24] Sacred Consist. Cong., April 30, 1918 (*Acta Ap. Sedis,* X, 237).

1397. Local Ordinaries have the right, either in person or through others, to visit any schools, oratories, asylums, orphanages, or any other similar institute or house to investigate all matters connected with religious and moral instruction. From this visitation the schools conducted by no religious organization whatsoever are exempted, unless it is a domestic school for the professed members of an exempt organization (**Canon 1382**). In the religious education of the students of any boarding school, the rule of Canon 891 must be observed, namely, that the superior of the school may not hear the confessions of the students except when he is in an individual case requested by a student to hear the confession (**Canon 1383**).

The right of visitation and supervision of all schools is given by the Code to the local Ordinaries, but in exempt organizations that right extends merely to the inquiry concerning correct teaching in matters of faith and morality. The bishop of the diocese is appointed by the divine law the guardian of faith and morality in his territory. The Code admits no exemption, except in the case of the internal school for professed members in exempt organizations, which is of the nature of a family affair and not a public place of teaching. The question has been discussed whether, under Canon 1382, the minor seminaries of exempt religious, in which they train boys who have manifested their desire to enter later the community, are exempt from the bishop's visitation concerning religious and moral teaching. Basing its arguments on the various sketches of the law of Canon 1382 and its final form as adopted in the Code, the "Commentarium pro Religiosis" [25] proves that the minor seminaries are not exempt. In any case, they are not a merely internal affair of the religious community as such.

TITLE XXIII

OF THE CENSORSHIP AND THE PROHIBITION OF BOOKS

1398. The Church has the right to demand that Catholics shall not publish any books without first submitting them for her judgment and approval, and to forbid for a good reason

[25] Vol. IV (1923), 224.

the reading of books published by anyone. Whatever is prescribed under this title regarding books, shall be applied also to newspapers, periodicals, and all other published writings, unless the contrary is certain (**Canon 1385**).

Chapter I

OF THE CENSORSHIP OF BOOKS

1399. Without previous ecclesiastical approval, even laymen are not allowed to publish:

(1) the Books of Sacred Scripture, or annotations and commentaries on the same;

(2) books treating of Sacred Scripture, theology, church history, canon law, natural theology, ethics, or other religious or moral sciences; books or pamphlets of prayers, or of devotion, or of religious, moral, ascetic, or mystical doctrine and instruction, and other works of a similar nature, even though they seem conducive to the fostering of piety; finally, other writings in general which contain anything that has a special bearing on religion or morality;

(3) any reproductions whatsoever of sacred images, whether they are issued with or without prayers (**Canon 1385,** § 1).

1400. The permission to publish books and images spoken of in this Canon may be given either by the proper local Ordinary of the author, or by the local Ordinary of the place where the books or images are published, or the local Ordinary of the place where they are printed; if, however, any one of the Ordinaries who has a right to give the approval has refused the *Imprimatur,* the author cannot ask it from another without informing him of the refusal of the first Ordinary. Religious authors must also obtain the permission of their major superior before publication (**Canon 1385,** § 2).

Special Rule for the Secular and the Religious Clergy

1401. Secular clerics are forbidden to publish any book on secular topics, or to contribute to or edit daily papers or periodicals, pamphlets or booklets, without the consent of their Ordinaries. Religious need the permission of both their own major

superior and the local Ordinary. For papers and periodicals, which attack the Catholic religion or good morals, not even laymen shall write anything except for a good and reasonable cause, to be approved by the local Ordinary (**Canon 1386**).

The Code repeats the law on the censorship and prohibition of books as contained in the Constitution "Officiorum ac Munerum" of Pope Leo XIII, except that it arranges the various points in a different order.[26] The Constitution of Pope Leo XIII also gives a short sketch of the history of the activity of the Church in watching over publications which endanger faith and morality. The reader may also peruse with profit the Constitution of Pope Benedict XIV, in which he prescribes the method to be followed in the examination and condemnation of books.[27]

Publication of Matters Relative to Beatification or Canonization, and Indulgences

1402. Matters pertaining in any manner to the causes of beatification and canonization of the servants of God may not be published without permission from the Sacred Congregation of Rites (**Canon 1387**).

By the Constitution "Cœlestis Hierusalem" of July 5, 1634, Pope Urban VIII issued the prohibition contained in Canon 1387 with reference to the publication of the lives, deeds and miraculous powers in life or after death of men and women who became famous for extraordinary holiness of life.[28] The Code does not mean to say that permission of the Holy See is required to write the life and history of great men and women, but it does forbid all writings that have the object of promoting their cause of beatification or canonization. It is evident that no private authority may publicly advocate the religious veneration of any deceased person, because the Church has reserved that judgment to herself, and she proceeds most cautiously in the investigation of the lives of such persons and of the extraor-

[26] January 25, 1897; *Acta S. Sedis,* XXIX, 388–400.

[27] Const. "Sollicita ac provida," July 9, 1753 (Gasparri, "Fontes Cod. Jur. Can.," II, 404). By *Motu Proprio* of Pope Benedict XV, March 25, 1917, the Sacred Congregation of the Index was abolished, and the censorship of books committed to the Holy Office; the Code confirms this arrangement (cfr. Canon 247).

[28] Gasparri. "Fontes Cod. Jur. Can.," I, 402.

dinary favors that are claimed to have been obtained by individuals through their intercession.

1403. No book, collection, booklet, leaflet, etc., in which concessions of indulgences are contained, shall be published without the permission of the local Ordinary. Explicit permission of the Holy See is required for printing in any language an authentic collection of prayers and good works to which the Holy See has attached indulgences, or a list of the papal indulgences, or a collection of indulgences, whether this summary was previously collected but never approved, or is now to be collected for the first time from various concessions (**Canon 1388**).

As the Holy See desires to ensure that no fictitious indulgences be published, she does not want any private authority to compile lists or collections of indulgences without the approval of the Sacred Congregation in charge of indulgences (at present the Sacred Penitentiary). Likewise, official collections of indulgences and indulgenced prayers may not be reprinted in any language without permission of the Holy See. If there is question of an individual indulgence, or of a summary of indulgences taken from *one* Apostolic Rescript or Brief, or of a list of indulgences already made public (for instance, in the *Decreta Authentica* of the Sacred Congregation of Indulgences, or the *Acta Apostolicæ Sedis*), the local Ordinary can give permission for the reprinting of these indulgences, unless the Papal Rescript, Decree, etc., expressly reserves the reprinting of them to the Holy See. Canon 1388 is taken largely from the Decree of the Sacred Congregation of Indulgences of January 22, 1858.[29] For practical purposes it is necessary that the bishop should have power to authorize the publication of indulgences conceded by public papal documents (e.g., those published in the *Acta Apostolicæ Sedis*), because, if the permission of the Holy See were required also in such instances, the purpose of such documents would be to a large extent frustrated.

Publication of Collections of Decrees of the Holy See and of Liturgical Books

1404. Collections of Decrees of the Roman Congregations cannot be published anew without first obtaining the permission

[29] *Decreta Auth.*, n. 383. Cfr. Beringer, "Die Ablässe" (14th ed.), I, p. 148.

of, and observing the conditions prescribed by the Prefect of the Sacred Congregation in question (**Canon 1389**).

Some of the Collections of Decrees of the Roman Congregations are private; others are official and made by the Sacred Congregations themselves. The Constitution "Officiorum ac Munerum" of Pope Leo XIII forbade the publication of Collections of Decrees of individual Congregations without the permission of the Prefect of the respective Congregation. The Code speaks only of a re-publication of these collections, but Blat concludes that it includes *a fortiori* the unauthorized compilation and publication of such a collection.[30] In any case, no bishop would think of approving a work which claims to be a Collection of Decrees of any of the Sacred Congregations. Various periodicals intended for the clergy give a reprint, or a translation, of current documents of the Holy See, but they are not Collections of Decrees in the sense of Canon 1389; they are rather a necessary means to spread the knowledge of the Acts of the Holy See. The approval of the local Ordinary suffices for such publications.

1405. In the publication of liturgical books, or parts thereof, and of litanies approved by the Holy See, the Ordinary of the place where the printing is done, or of the place where they are published, must attest that the texts as published agree with the approved editions (**Canon 1390**).

The liturgical books of the Church contain the official ceremonies and prayers which the Church employs in the public exercise of divine worship. Because of the important bearing which these prayers and ceremonies have on the Catholic faith, the Church is very cautious in giving her official approval to liturgical books, and, once they are approved, she watches carefully lest errors or unauthorized changes should appear in new editions. The first or *typical* edition of a liturgical book may be printed only by either the Papal *Typographia Polyglotta* at the Vatican or by one of the so-called Printers to the Holy See, who get this permission from the Sacred Congregation of Rites. The details of printing a *typical* edition are outlined in the Decree of the Sacred Congregation of Rites, May 17, 1911.[31] Once the typical edition has been completed, any printer may,

[30] *Commentarium*, IV, n. 277.
[31] *Acta Ap. Sedis*, III, 242.

with the approval of the local Ordinary, reprint the liturgical books on condition that he follows the original edition, and that the Ordinary vouches for the exact concordance of the reprint with the original. Concerning the liturgical chant, the Sacred Congregation of Rites forbids any one to reprint in whole or in part any liturgical chant without its permission, and lays down the rules according to which publishers, under the supervision of the local Ordinary, are to make use of the permission.[32]

Publication of Translations of the Holy Bible

1406. Translations of the Holy Scriptures in the vernacular may not be printed unless they have been approved by the Holy See, or are published under the supervision of the bishops and provided with annotations taken especially from the holy Fathers of the Church and learned Catholic writers (**Canon 1391**).

When the Holy See approves a translation into one of the modern languages, no explanatory notes need accompany the text. If the bishop approves of the translation, notes must accompany the translation. There was some uncertainty as to the construction of the phrase: "sub vigilantia Episcoporum *et* cum adnotationibus . . ." Wherefore, the Committee for the Authentic Interpretation of the Code declared that both the approval of the bishop and the explanatory notes are required.[33] In the preface to the Clementine edition of the Vulgate there is a prohibition to add the variant readings of other manuscript bibles in the margin of the text. The Holy See was asked whether this prohibition also forbids to add such readings for the benefit of the students at the bottom of the pages of the text. The Biblical Commission answered that it was not forbidden to do so.[34]

Extent of the Permission to Publish a Book

1407. When a work is approved in its original text, the approval does not extend to translations into other languages or to other editions; wherefore, both the translations and new

[32] August 11, 1905, and August 14, 1905 (*Acta S. Sedis*, XXXVIII, 114, 240).
[33] Cfr. App. III, 60, a.
[34] November 17, 1921 (*Acta Ap. Sedis*, XIV, 27).

editions of a work already approved need a new approval. If various chapters or articles which have appeared in periodicals are published separately, they are not considered a new edition, and thus do not need a new approval (**Canon 1392**).

It seems reasonable to hold with Augustine [35] that the mere printing of additional copies of a work from plates from which the work was originally printed is not a new edition in the sense of the Code, provided that no alterations in the original text are made in the reprint, excepting purely mechanical changes or corrections of obvious printer's errors. What exactly is meant by the separate publication of chapters or articles from a periodical, is not so certain. Probably, one must hold with Blat, Augustine, and others that the Code means only individual chapters or articles, and requires a new approval if the chapters or articles are published in book form, for such a book cannot very well be covered by the term "excerpta capita." [36]

Rules for Diocesan Censorship

1408. In every episcopal Curia there shall be official censors, who shall examine the works to be published. These examiners must set aside all respect for persons in the exercise of their office, and shall keep before their eyes only the dogmas of the Church and the universal Catholic doctrine contained in the Decrees of General Councils, in the constitutions and orders of the Apostolic See, and in the consensus of the approved Doctors. The censors should be taken from both the secular and religious clergy, and should be men of mature age, of tried learning and prudence, who will take the golden mean in approving or rejecting doctrines.

The censor must give his opinion in writing: if it is favorable, the Ordinary shall give permission to publish, and the *Imprimatur* of the Ordinary shall be preceded by the verdict of the censor under his name. Only under extraordinary circumstances and in rare cases, when the Ordinary deems this course prudent, may the name of the censor be omitted. The authors shall never be informed of the name of the censor who

[35] "Commentary," VI, 450.

[36] Blat, "Commentarium," IV, n. 280; Augustine, "Commentary," VI, 450.

is to examine their book before he has given a favorable opinion (**Canon 1393**).

1409. The permission of the Ordinary to publish (i.e., *Imprimatur*) shall be given in writing, and it shall be printed either at the beginning or end of the book or paper, or on the front or back of the picture, with his name and the date and place of the concession. If permission for publication is to be denied, the reasons shall be given at the request of the author, unless there is a grave reason why this should not be done (**Canon 1394**).

The commentators do not agree on the question whether the favorable opinion of the censor—usually expressed by the words "Nihil obstat," together with his name—should be printed in the book above the "Imprimatur" of the Ordinary. It is not very plain from Canon 1393 whether the direction that the bishop's permission to publish a book is to be preceded by the opinion of the censor with his name, is to be followed in the book, or whether it has reference to the document only by which permission is given to the author. An examination of works recently published will show that the practice is not uniform.[37]

Chapter II

OF THE PROHIBITION OF BOOKS

1410. The right and duty to prohibit books for a good reason is vested not only in the Supreme Pontiff for the Universal Church, but also in the particular Councils and the local Ordinaries for their respective subjects. An appeal from the prohibition of inferior authorities may be made to the Holy See, but not *in suspensivo* (which means that the prohibition must be obeyed until Rome has rescinded the orders of the inferior authority). The abbot of an independent monastery, and the supreme superior of an exempt clerical religious body, may also with their respective Chapters or Councils forbid books to their subjects for a good reason; this same authority is possessed by other major superiors with their council in cases where immediate action becomes necessary, but they are bound to refer the matter as soon as possible to the supreme superior (**Canon 1395**).

[37] Cocchi, "Commentarium," VI, n. 64.

As the Code states that the prohibition of particular Councils and of the local Ordinaries affects their respective subjects only, exempt religious and persons who have not a domicile or quasi-domicile in the territory of these authorities are not bound by the prohibition, nor are their subjects bound during their absence from the territory (cfr. Canon 13). The rule of the Code which gives power to abbots and the supreme heads of exempt organizations of religious to forbid books to their subjects, is a departure from the former law, which gave these superiors no jurisdiction over the matter of the prohibition of books; at most, they could forbid their subjects to read certain books by the domestic power (*potestas dominativa*), which is possessed by all religious superiors over their subjects.

1411. Books condemned by the Holy See shall be considered forbidden everywhere and in every language into which they are translated (**Canon 1396**).

The Holy See has repeatedly urged the bishops to watch over the books published in their respective dioceses and to forbid those which they find dangerous to faith or morality. For, as the Holy See explains, it is impossible for the Sacred Congregation in charge of this matter to stop pernicious books as promptly as should be done, and, since a good deal of time elapses in some cases before a book is brought to the notice of the Holy See, much harm may be done by such a book in the meantime.[38]

Duty to Assist the Church in the Prohibition of Books

1412. It is the duty of all the faithful—and especially of the clergy, of ecclesiastical dignitaries, and of men of distinguished learning—to report to the local Ordinaries or to the Holy See books which they consider pernicious. This duty pertains by special title to the legates of the Holy See, to local Ordinaries, and to rectors of Catholic Universities. It is advisable that the denunciation of a book should not only give its title, but also, in so far as possible, the reasons why a book is thought to deserve condemnation. Those to whom a book is denounced are by sacred duty bound to keep secret the names

[38] Sacred Congregation of the Index, Aug. 24, 1864 (*Coll. de Prop. Fide*, I, n. 1261). Condemnation of books and other publications by the Holy See to be observed also by Oriental Church, cfr. App. III, 60, b.

of those who denounce it. The local Ordinaries must, either in person or if necessary through other capable priests, watch over the books which are published or sold in their territory. The Ordinaries shall refer to the judgment of the Holy See those books which require a more searching examination, or which for their effective prohibition seem to demand the condemnation of the Supreme Authority (**Canon 1397**).

In the document that condemned modernism, Pope Pius X stated that the local Ordinaries can, and are bound to, forbid books which, after due consultation with learned men, they judge to be harmful to faith or morality in their diocese, notwithstanding the fact that the books are published with the "Imprimatur" required by Canon Law. The Supreme Pontiff explains that at times the approval is given too readily, as a result of excessive confidence in the author; besides, he argues, what may not be harmful in one place, may be so in another.[39]

Consequences of the Prohibition of a Book

1413. The prohibition of books has this effect, that the forbidden books may not without due permission be published, read, retained, sold, or translated into another language, or communicated to others in any manner. A book which has in any way been forbidden may not again be published, until the demanded corrections have been made, and the authority which forbade the book, or his superior or successor, has given permission to publish it (**Canon 1398**).

Catholic book dealers cannot keep forbidden books in their stores without the permission of the bishop, if he forbade the books in question, or without permission of the Holy See, if the books were forbidden either by the general laws of the Code or by the special prohibition of the Holy See. If they get permission to keep such works, they may sell them only to those who, they have reason to believe, enjoy permission to read them.

Books Forbidden by Law

1414. By the law itself are forbidden:

(1) editions of the original text or of ancient Catholic versions of the Sacred Scriptures (including those of the Oriental

[39] Encyclical, "Pascendi," Sept. 8, 1907 (*Acta S. Sedis*, XL, 593–650).

Church), published by any non-Catholics whatsoever; likewise translations of these texts made or published by non-Catholics;

(2) books of any writers defending heresy or schism, or tending in any way to undermine the very foundations of religion;

(3) books which avowedly attack religion or good morals;

(4) books of any non-Catholics treating professedly of religion, unless it is certain that they contain nothing contrary to the Catholic faith;

(5) books of Sacred Scripture, notes and commentaries thereon, and translations which have been published without the permission required by Canon 1385 and Canon 1391; books and pamphlets which give an account of new apparitions, revelations, visions, prophecies, or miracles, or which introduce new devotions (even if it is claimed that the devotions are private), unless the precepts of the Canons regarding their publication have been observed;

(6) books which attack or ridicule any of the Catholic dogmas, or which defend errors condemned by the Holy See, or which disparage divine worship, or strive to overthrow ecclesiastical discipline, or which have the avowed aim of defaming the ecclesiastical hierarchy or the clerical or religious states;

(7) books which teach or approve of any kind of superstition, fortune-telling, divination, magic, communication with spirits, and other things of that kind;

(8) books which declare duels, suicide, or divorce as licit; which treat of the masonic and other similar sects, and contend that these are not pernicious, but rather useful to the Church and civil society;

(9) books which professedly discuss, describe or teach impure and obscene topics;

(10) editions of liturgical books approved by the Holy See, which have been unlawfully changed in some particulars so that they no longer agree with the authentic and approved editions;

(11) books which publish indulgences which are apocryphal, or which have been condemned or recalled by the Holy See;

(12) any images whatsoever of our Lord, of the Blessed Virgin, of the angels, or of the saints or other servants of God,

which are not in harmony with the spirit and the Decrees of the Church (**Canon 1399**).

1415. In connexion with these twelve classes of books, which are prohibited by law without further condemnation on the part of the local Ordinary or the Holy See, one must keep in mind the rule of Canon 1384, which declares that whatever is said by the Canons of Title XXIII about books applies likewise to daily papers, periodicals, and other publications, unless it is clear from the Code that books only are meant. N. 3 of this list of forbidden books mentions books which avowedly attack religion or good morals; it is not certain whether the Code means books which attack the Catholic religion, or those which attack religion generally. The commentators are divided, but it seems that the prohibition extends, not only to books and other publications which attack the teaching of the Catholic Church, but also to all books which undermine the foundations of religion—for instance, atheistic, materialistic publications.[40]

Permission to Read Certain Prohibited Books Given by Law

1416. Books mentioned in Canon 1399, n. 1, and books published in violation of Canon 1391, are allowed to be read by those only who are in any way engaged in theological or biblical studies, provided these books are faithful and complete copies of the originals, and do not in their introduction, or in their notes, attack the dogmas of the Catholic faith (**Canon 1400**).

For the purpose of facilitating the study of the Sacred Scriptures, which the Church wants to encourage, the law itself grants permission to all students of the Bible or of theology in general (laymen or clerics, in private study or in a school) to have and use editions of original texts and ancient Catholic versions of the Bible and translations into other languages, even though these were published by non-Catholics. If, however, these editions and translations attack Catholic dogmas in the introduction or in the notes, or if they are not faithful and complete copies of the original texts or of ancient Catholic versions, they are forbidden to students as well as to others. If students need to consult such forbidden bibles, they must obtain permission to read them.

[40] Vermeersch-Creusen, "Epitome," II, n. 733.

1417. Cardinals and bishops (both residential and titular), and other Ordinaries, are not bound by the ecclesiastical prohibition of books, provided they employ the necessary precautions (**Canon 1401**).

The term "Ordinaries" includes (besides residential bishops) abbots and prelates *nullius,* vicar-generals, administrators of a diocese, vicars and prefects Apostolic, administrators of a prefecture or vicariate, and major superiors of clerical exempt organizations of religious (cfr. Canon 198).

Manner of Obtaining Permission to Read Forbidden Books

1418. In the case of books forbidden by the general law of the Church or by Decree of the Holy See, Ordinaries can give their subjects permission to read only individual books and in urgent cases only. If the Ordinaries have obtained from the Holy See a general faculty to allow their subjects to keep and read forbidden books, they shall grant this permission only with discretion and for a good and reasonable cause (**Canon 1402**).

Persons who have obtained from the Holy See the permission to read and keep forbidden books cannot for that reason read and keep books forbidden by their own Ordinaries, unless the Apostolic indult explicitly grants them the faculty to read and keep books forbidden by *any* authority. Moreover, they are bound by grave precept to guard the forbidden books in such a manner that they shall not fall into the hands of others (**Canon 1403**).

1419. Bookdealers shall not sell, loan, or keep books which treat professedly of obscene matters. Furthermore, they shall not have other forbidden books for sale, unless they have obtained the proper permission from the Holy See, nor shall they sell them to any one unless they can reasonably judge that the buyer legitimately asks for them (**Canon 1404**).

1420. The permission to read forbidden books exempts nobody from the prohibition of the natural law, which forbids the reading of books which are for the particular reader a proximate occasion of sin. Local Ordinaries and others who have the care of souls shall on opportune occasions warn the faithful of the

danger and harm of reading bad books, especially such as have been forbidden (**Canon 1405**).

The Constitution "Officiorum ac Munerum" of Pope Leo XIII (cap. IV, n. 10) discussed the question of obscene ancient and modern classics, and ruled that they might be read only by those whose office or position as teacher required it. The Code has no ruling of this kind. If some person is forced to read these books because the school at which he is, and from which he cannot easily get away, insists on having these impure classics as text-books, the positive law of the Church does not oblige under the circumstances, but he has to employ the necessary means to make the danger to his soul as remote as possible. No necessity or reason can ever excuse one from doing what is a proximate danger of sin in one's individual case. It is impossible to give an absolute rule as to what is a proximate, and what a remote danger of sin: that depends on the character and disposition of the individual, though it cannot be denied that certain things are of their nature greater temptations to sin than others. With reference to the penalties for the violation of the laws on forbidden books, cfr. Canon 2318.

TITLE XXIV

OF THE PROFESSION OF FAITH

1421. The following persons are bound to make the profession of faith according to the form approved by the Holy See:

(1) Those who assist, either with a decisive or a consultive vote, at a General or Particular Council or diocesan synod. The profession of faith is to be made by the members in the presence of the president of the assembly or his delegate, while the president makes it in the presence of the council or synod;

(2) persons promoted to the dignity of Cardinals in the presence of the Dean of the Sacred College, the first Cardinal Priest and Cardinal Deacon, and the Camerlengo of the Holy Roman Church;

(3) persons promoted to an episcopal see (residential or titular), to the government of an abbey or prelacy *nullius*, or to a vicariate and prefecture Apostolic, in the presence of a delegate of the Apostolic See;

(4) the vicar-capitular in the presence of the Cathedral Chapter;

(5) persons promoted to an ecclesiastical dignity or canonry in the presence of the local Ordinary (or his delegate) and the Chapter;

(6) persons appointed to the office of diocesan consultor in the presence of the local Ordinary (or his delegate) and the other consultors;

(7) the following persons in the presence of the local Ordinary (or his delegate): the vicar-general, pastors, and others obtaining any kind of benefice (though removable) to which the care of souls is attached; the rector and professors of sacred theology, canon law and philosophy in seminaries (who must make the profession at the beginning of each scholastic year, or at least on first undertaking their office); all candidates for subdeaconship; the censors of books, mentioned in Canon 1393; priests approved for confession and preaching, before they receive the faculty to exercise these offices;

(8) the rector of a Catholic University or Faculty in the presence of the local Ordinary (or his delegate); all professors of a canonically erected University or Faculty at the beginning of each scholastic year (or, at least, on assuming their office), and those who after examination receive academic degrees, in the presence of the rector of the University or Faculty (or his delegate);

(9) superiors in clerical religious organizations in the presence of the Chapter or the superior who appointed them (or their delegate).[40a]

A cleric who relinquishes a former and obtains a new office, benefice, or dignity, even of the same species, must again make the profession of faith, as required by this Canon (**Canon 1406**).

1422. The formula of the profession of faith will be found preceding the Appendices in the present volume. The Code does not oblige the professors of theology and philosophy in the schools of the religious organizations to take the oath, as it speaks only of professors of seminaries, which term is used by the Code to designate the diocesan seminary. However, the Holy Office ruled that the laws of Pope Pius X against the errors of modernism, though not embodied in the Code, are for the present, and until the Holy See shall decree otherwise,

[40a] Concerning communities without vows, cfr. App. III, 61.

to remain in full force.[41] In one of these documents, the *Motu Proprio* "Sacrorum Antistitum,"[42] the profession of faith and the oath against modernism must be taken by practically all the men enumerated in Canon 1406, and also by the professors of philosophy, theology and Canon Law in the schools of religious organizations. These religious make the oath and the profession of faith in the presence of the major superior or his delegate.[43]

The obligation of making the profession of faith is not satisfied by making it through a proxy or in the presence of a layman (**Canon 1407**). Every custom contrary to the Canons of this Title of the Profession of Faith is condemned (**Canon 1408**).

PART FIVE

OF BENEFICES AND OTHER NON-COLLEGIATE INSTITUTES OF THE CHURCH

TITLE XXV

OF ECCLESIASTICAL BENEFICES

1423. An ecclesiastical benefice is a juridical entity, permanently constituted or erected by the competent ecclesiastical authority, and consisting of a sacred office and the right to receive the revenue accruing from the endowment of such office (**Canon 1409**).

The endowment of a benefice consists either of goods owned by the benefice itself as a juridical entity, or of definite obligatory payments of some family or moral person, or of definite voluntary offerings of the faithful which belong to the rector of a benefice, or of so-called stole fees received according to and within the limits of the diocesan taxation or legitimate

[41] Cfr. App. III, 4, a. *Ap. Sedis*, X, p. 136).

[42] *Motu Proprio* "Sacrorum Antistitum," September 1, 1910 (*Acta Ap. Sedis*, II, 655); the oath against modernism is given in this document (ibid., II, 669). Condemnation of modernism and rules for guarding against it are given in the Encyclical "Pascendi Gregis," of Pope Pius X, September 8, 1907 (*Acta S. Sedis*, XL, 593).

[43] Declarations on the "Sacrorum Antistitum" by the Sacred Consistorial Congregation, September 25, 1910 (*Acta Ap. Sedis*, II, 740).

custom, or of choir distributions, one-third of which are excluded if the entire revenue of a benefice consists of choral distributions (**Canon 1410**).

The question whether there are benefices in the United States is not of much practical value. There is no objection if the bishop chooses to raise parishes to the status of a benefice; also, chaplaincies in the various ecclesiastical institutions might be erected into benefices. The requirements are that the bishop formally declare a certain office, together with its revenue, a benefice for all time. This objective perpetuity is essential to a benefice, as the holder of the benefice may or may not have a right for life to hold and enjoy the benefice.

Various Kinds of Benefices

1424. Ecclesiastical benefices are called:

(1) *consistorial,* if they are usually conferred in consistory (for instance, bishoprics in the United States); others are known as *non-consistorial;*

(2) *secular* or *religious,* according as they concern exclusively the secular or the religious clergy. However, all benefices erected outside the churches or houses of religious are in case of doubt presumed to be secular benefices;

(3) *double* (or *residential*) or *simple* (or *non-residential*), according as the duty of residence is, or is not attached to the benefice besides the other duties incumbent on the holder of the benefice;

(4) *manual* (*temporary,* or *removable*) or *perpetual* (or *irremovable*), according as they are conferred either revocably or permanently;

(5) *curate* (*curata*) or *non-curate* (*non-curata*), according as the care of souls is or is not attached to the benefice (**Canon 1411**).

Offices which Are Not Benefices in Law

1425. Though the following offices and positions bear some similarity to the benefices, they do not in law come under the name of benefices:

(1) parochial vicarships which are not erected permanently (the office of *vicarii cooperatores,* assistant priests in parishes,

could be erected into benefices, but in the United States it has not been the custom to make them such);

(2) laical chaplaincies, namely those that are not erected by the competent ecclesiastical authority;

(3) coadjutorships, with or without the right of future succession;

(4) personal pensions (because of their lack of objective perpetuity);

(5) temporary *commenda*, which consists in the cession to some person of the revenues of a church or monastery in such a manner that, with the death of the person holding the *commenda*, the revenues revert to the church or monastery (**Canon 1412**).

Meaning of the Term Benefice in the Canons on Benefices

1426. Unless the contrary is evident, the following Canons refer exclusively to non-consistorial benefices properly so-called. Canons 147–195 on appointment to ecclesiastical offices are to be observed also in appointment to offices to which a benefice is attached (**Canon 1413**). From the first sentence in this Canon, it is evident that the offices mentioned in Canon 1412 are not affected by the succeeding Canons, nor is the episcopal benefice, which is *per se* consistorial, though in some dioceses the right of election or nomination or presentation has been conceded to others by the Holy See.

Chapter I

OF THE CONSTITUTION OR ERECTION OF BENEFICES

1427. Consistorial benefices can be erected by the Holy See only. Besides the Roman Pontiff, the Ordinaries may erect in their respective territories non-consistorial benefices, without prejudice to Canon 394, which reserves to the Holy See the erection of dignities in the Cathedral Chapter. (Since there are no Cathedral Chapters in the United States, these benefices commonly had in Chapters are unknown in this country.) Vicars-general cannot erect benefices without a special mandate from their Ordinary. Cardinals, however, may erect in the

church of their title benefices to which no care of souls is attached, unless the church belongs to an exempt clerical organization of religious (**Canon 1414**).

Conditions to be Observed in the Erection of Benefices

1428. Benefices should not be erected unless there is assured a stable and sufficient endowment, from which revenues accrue perpetually in the manner specified in Canon 1410. If the endowment consists of a set sum of money, the Ordinary, after consultation with the diocesan board of administration, spoken of in Canon 1520, shall take care to have the money as soon as possible invested in safe and fruitful real estate or bonds. It is, however, not forbidden to erect parishes or quasi-parishes, where a proper endowment cannot be had, if one can prudently foresee that the necessary revenues will be obtained from other sources (**Canon 1415**).

The Code allows a great deal of latitude with regard to the so-called endowment of a benefice. In Canon 1410 a number of ways are enumerated by which the necessary revenue for the benefice may be obtained, and even the voluntary offerings of the faithful may serve as an endowment, as long as the bishop is morally certain that they will contribute sufficient to maintain the priest and church respectably.

1429. Before the erection of a benefice, the persons concerned, if there be any, should be called and given a hearing (**Canon 1416**).

The obligation on the part of the local Ordinary to inform the interested parties of the erection of a new benefice, and to listen to reasonable objections, will frequently occur in the erection of new parishes. Thus, for instance, both the pastor and the people of a parish which is to be divided are interested parties, especially in the circumstances of the Church in the United States, where the people by their contributions must bear the entire burden of erecting the necessary buildings and of paying the salaries of the priests and of others needed in the service of the parish. Again, if a parish is to be established where there was none before, it is a question whether the people are able and willing to undertake the heavy burden of founding a new parish.

Stipulations that May be Made by Founder of a Benefice

1430. In establishing a benefice, the founder may with the consent of the Ordinary stipulate even conditions contrary to the common law, provided they are not discreditable or incompatible with the nature of the benefice. Once the stipulations have been accepted, the Ordinary cannot validly suppress or change them, unless the change is favorable to the Church, and the consent of the founder himself—or of the patron, if there is question of the right of patronage—is obtained (**Canon 1417**).

It is evident that the Church wants to encourage pious foundations, for she grants the founder the extraordinary privilege of adding stipulations which are contrary to the common law, and she protects the agreement between the founder and the Ordinary to such an extent that the Ordinary cannot modify the agreement except with the consent of the founder. Changes which are to the disadvantage of the Church cannot be made, even with the consent of the Ordinary and the founder.[1]

Formal Erection of Benefices

1431. The erection of benefices is to be effected by a legal document, which shall define the place where the benefice is erected, and describe the endowment of the benefice and the rights and obligations of the beneficiary (**Canon 1418**).

By this formal document, the benefice obtains the nature of a legal personality capable of legal rights. It seems that, by Canon 100, the document is essential to the constitution of a benefice. In the United States the laws of the Church are not recognized by the State. Wherefore, if the benefice is to have a legal standing before the civil law, it must be incorporated under the laws of the respective state.

[1] Cocchi, "Commentarium," VI, n. 90.

Chapter II

OF THE UNION, TRANSFER, DIVISION, DISMEMBERMENT, CONVERSION AND SUPPRESSION OF BENEFICES

1432. The union of benefices is:

(1) *extinctive,* if out of two or more benefices only one new benefice is created, or one or several are united to another in such a manner that they cease to exist;

(2) *equally principal,* if the united benefices remain the same as they were before, without the subordination of one to the other;

(3) *less principal,* or by *subjection* or *accession,* when the various benefices remain, but one or more are subordinated to another as an accessory to the principal benefice (**Canon 1419**).

In the *extinctive union,* the benefice which emerges or remains has all the rights and obligations of the extinct benefices, and, if they are incompatible, the better and more favorable rights and obligations are to be retained. In the *equally principal union,* each benefice preserves its nature, rights and obligations, but in virtue of the effected union the titles to the various united benefices must be conferred on one and the same cleric. In the *less principal union,* the accessory benefice follows the principal one, so that the cleric who obtains the principal benefice also acquires by that very fact the accessory benefice, and must fulfill the obligations of both (**Canon 1420**).

In the United States the union of benefices is practically unknown, except perhaps in the instance of combining several parishes into one in cases where the population has moved in large numbers from a district where there were several parishes formerly, but where it has later become unnecessary or impossible to maintain several parish churches.

1433. The *transfer* of a benefice occurs when the seat of the benefice is changed from one place to another; the *division* of a benefice occurs when two or more benefices are made out of one; *dismemberment* occurs when a part of the territory or of the goods of a benefice is withdrawn and assigned to another benefice or to a charitable or other ecclesiastical institute; *conversion* means the change of a benefice into a specifically different benefice; *suppression* means the complete extinction of the benefice (**Canon 1421**).

1434. To the Holy See is reserved: the extinctive union of benefices, their suppression, and the dismemberment which is effected by taking away the goods of a benefice without erecting a new benefice; also the equally and less principal union of a religious benefice with a secular benefice, or the reverse; likewise, any transfer, division and dismemberment of a religious benefice (**Canon 1422**).[2]

Since the extinctive union, the suppression and the dismemberment of benefices entail the exercise of the power of eminent domain in the disposition of ecclesiastical goods contrary to the rights of individual ecclesiastical persons (for each benefice is an ecclesiastical person), the supreme power of the Church, to the exclusion of all other authorities, has the power to deprive these persons of their rights. The same reason applies to the union of a religious with a secular benefice or the reverse, because in this case also certain rights of the one or the other legal person are invaded. The transfer, division and dismemberment of religious benefices is reserved to the Holy See, no distinction being made between exempt and non-exempt organizations. The parishes held by religious do not come under this rule of Canon 1422, but rather under the special provision of Canon 1427, wherein power is given to the local Ordinary to dismember or divide the religious parishes in the same manner as he can divide the secular parishes.

Power of Local Ordinaries to Effect a Union of Benefices

1435. Local Ordinaries, but not the vicar-capitular, nor the vicar-general without a special mandate, may because of the needs or the great and evident interest of the Church, effect an equally or less principal union of parish churches among themselves or with a non-curate benefice, provided in the latter case that in a less principal union of a parish with a non-curate benefice the non-curate benefice be made accessory to the parochial benefice.

Local Ordinaries, however, cannot unite a parish with the *mensa episcopalis* or *capitularis,* with monasteries, churches of religious or other moral persons, nor with the dignities and

[2] The dismemberment of parishes is within the power of the bishop (Sacred Cong. of the Council, Jan. 14, 1922; *Acta Ap. Sedis,* XIV, 229).

benefices of a cathedral or collegiate church. They may, however, unite a parish with the cathedral or collegiate church when the latter is situated within the territory of the parish, the union being such that the revenues of the parish go to the benefit of the cathedral or collegiate church, while the pastor or parochial vicar is left a portion sufficient for his maintenance. No union of benefices can be made by the local Ordinaries unless it is in perpetuity (**Canon 1423**).

1436. The Ordinaries may never unite any curate or non-curate benefice to the detriment of the actual beneficiaries contrary to the wish of the latter; nor unite a benefice over which somebody has the right of patronage with a benefice of free appointment without the consent of the patron; nor a benefice of one diocese with a benefice of another diocese, though both dioceses are united by equally principal union and governed by one and the same bishop; nor exempt benefices or benefices reserved to the Holy See with any other benefices (**Canon 1424**).

Parishes United with Houses of Religious

1437. If a parish is united by the Holy See with a religious house with respect to the *temporalities only,* the religious house has merely the right to the revenues of the parish, and the superior must present a priest of the secular clergy to the bishop of the diocese to be instituted as pastor, assigning to such priest a proper portion of the revenues. If a parish is united with a religious house in *full right* (*pleno jure*), it becomes a religious parish, and the superior has the right to nominate a priest of his religious organization to exercise the care of souls, but the local Ordinary has the right to examine and institute him, and he is subject to the jurisdiction, correction and visitation of the local Ordinary in affairs relative to the care of souls, as specified in Canon 631 (**Canon 1425**).

Canon 1423 rules that local Ordinaries have no right to unite parishes with monasteries, churches of religious, or any other legal body, an exception being made in favor of cathedral and collegiate churches. Indirectly, therefore, Canon 1423 reserves the right of combining a parish with a religious house or church to the Holy See. The same law was in force before the promulgation of the Code. The union of a parish with

a religious house or church has this effect, that the religious community becomes entitled to the entire revenue of the parish, and is not bound to give an account to the bishop of the diocese of the receipts and expenditures in countries which are under the common law of the Church. This is clear from the Constitution "Romanos Pontifices" of Pope Leo XIII, in which it is stated that Pope Urban II and other Popes have ruled that religious must indeed be held liable to the bishop for the exercise of the care of souls, but that in temporal affairs these parishes are accountable, not to the bishop, but to the monastery.[3] In countries subject to the Sacred Congregation of the Propaganda, the same Constitution obliges religious to give an account of the revenue of the parish in the same manner as required of secular priests.

In former times religious were not to assume the care of souls, even when the parish had been united with the religious house in full right, but they were to present a secular priest to the bishop for the exercise of the care of souls and allow him a sufficient portion of the parish revenue for his maintenance. Hence the religious often looked for secular priests who would demand but a small salary, and many complaints were heard that incompetent men were entrusted with the care of the spiritual administration of the parish. The Council of Trent tried to stop these abuses by insisting that these so-called parochial vicars must be competent men, that their appointment was to be permanent unless the local Ordinary judged otherwise, and that one-third of the revenue of the parish—or at the discretion of the local Ordinary a greater or lesser portion—was to be assigned to them by the religious.[4]

Transfer of Benefices by Local Ordinaries

1438. If the needs or the great and evident advantage of the Church demands it, Ordinaries can transfer a secular parochial benefice from one place to another within the same parish. Other benefices, however, can be transferred only when the churches in which they were founded have collapsed and cannot be repaired: in this case they may be transferred to the mother

[3] May 8, 1881 (*Collectanea de Prop. Fide*, II, n. 1552). Cfr. App. III, 27, b; and for parish funds, Canon 533, § 1, n. 4.

[4] Sessio VII, cap. 7, *De Reform.*

church (that is to say, the church by which the now collapsed church was founded), or to other churches of the same or a neighboring place, with all the revenues and the obligations attached to the former church, and if possible altars or chapels should be erected under the same titles as in the original church (**Canon 1426**).

Division and Dismemberment of Parishes by Local Ordinaries

1439. For a just and canonical cause, Ordinaries may divide any parishes whatsoever—even against the will of their rectors and without the consent of the people—by erecting a "perpetual vicariate" (*vicaria perpetua*) or a new parish, or they may dismember the territory of any parish.

The only canonical reason for dividing or dismembering a parish is, if the people find it very difficult to attend the parish church, or the congregation is too numerous to permit their spiritual welfare to be properly cared for by the appointment of assistants to the pastors.

On dividing a parish, the Ordinary must assign to the new "perpetual vicariate" or to the new parish an appropriate portion of goods, observing the law of Canon 1500. If there is no other source of revenue, the goods to be assigned to the new parochial "vicariate" or the new parish are to be taken from any of the goods or revenue of the mother-church, provided a sufficient amount of income is left for this church.[4a]

If the perpetual parochial "vicariate" or the new parish is endowed by revenues of the church from which it has been separated, it must show respect to the mother-church in the manner and within the limitations to be specified by the Ordinary; he is, however, forbidden to reserve to the mother-church the exclusive right of administering the Sacrament of Baptism.

If a parish belonging to some religious organization is divided, the "perpetual vicariate" or the new parish does not belong to the religious; likewise, when a parish in which the right of patronage exists is divided, the new parish is free from the right of patronage, so that the Ordinary can freely bestow the new parish on a priest without the intervention of the patron of the mother-church (**Canon 1427**).

1440. The division of parishes is a matter of practical im-

[4a] Concerning loss of "decimæ" by old parish, cfr. App. III, 62.

portance, especially in countries like the United States, where immigration, the rapid shifting of the population, and other causes, frequently necessitate the erection of new parishes. The rules of the Code are quite explicit, and far-reaching power is given to local Ordinaries for the division of parishes whenever the spiritual interests of the people demand the erection of new parishes. The *vicariæ perpetuæ* of which the Code speaks are practically the same as new parishes, with the distinction that the priest in charge of a "parochial vicariate" does not have the title of pastor; he has all the rights and duties of a pastor. "Parochial vicariates," created by separating part of a parish and erecting the separated territory into a "parochial vicariate," are mentioned in the laws of the Decretals.[5] In the United States the original parish usually builds one or several chapels in outlying districts of the parish, and the pastor attends to these stations through his assistants until the Ordinary judges that a resident priest can be supported by the station; the station is then erected into a parish.

Canon 1500, which speaks of the division of the territory belonging to legal ecclesiastical persons, has application to the division of parishes, for a parish is a legal or moral ecclesiastical person. That Canon rules that the common goods which were destined for the benefit of the entire territory, and also the debts contracted for the entire territory, are to be apportioned in equitable proportion between the old and the new legal person. In the division of parishes in the United States the financial difficulties involved are often very great. Usually the parishes are not clear of debts, and there are no goods to be divided, for the parishes usually have no other goods or income than the voluntary offerings of the faithful. The new parish to be erected from the territory of the old parish will have to incur heavy debts to build a church, school, priest's residence, convent for the Sisters teaching at the parochial school, so that it would be scarcely just to ask the new parish to assume part of the debt of the mother-church. The local Ordinary must decide on whatever is just and equitable in the case, and respect the special laws governing certain legal persons (for instance, religious organizations).

1441. The Code gives the bishop power to divide or dis-

[5] *Decretal. Greg. IX*, c. 3, *De Ecclesiis ædificandis*, lib. III, tit. 48.

member any parishes, whether secular or religious, and it rules that the religious organization has no right to a new parish which is created by the division of their parish. Canon 1427 thus modifies Canon 1422, which, in reference to benefices generally, states that the division and dismemberment of religious benefices is exclusively reserved to the Holy See.

Manner of Procedure by the Local Ordinary in Effecting Changes in Benefices

1442. Local Ordinaries shall accomplish the union, transfer, division, or dismemberment of benefices by authentic document, and shall before taking action consult the Chapter (or diocesan consultors) and any persons that may be interested, especially the rectors of churches. The union, transfer, division, or dismemberment of benefices made without a canonical cause is null and void. Against the decree of the Ordinary uniting, transferring, dividing, or dismembering benefices, recourse may be had to the Holy See *in devolutivo* only—that is to say, the bishop's decree must meanwhile be obeyed (**Canon 1428**).

Imposition of Pensions on Benefices

1443. Local Ordinaries cannot impose on any kind of benefices perpetual pensions, nor temporary pensions that last for the lifetime of the pensionary; but for a just cause, to be stated in the very act of conferring the benefice, they may when conferring a benefice impose temporary pensions that last for the life of the person on whom the benefice is conferred; the pension must not be so high as to deprive the possessor of the benefice of proper maintenance.

On parochial benefices the local Ordinaries may impose pensions only in favor of the pastor or parochial vicar of that same parish when they go out of office; this pension, however, shall not exceed one-third of the revenue of the parish, after expenditures and uncertain revenue have been deducted.

Pensions imposed on benefices, either by the Roman Pontiff or by other grantors of benefices, cease with the death of the pensionary, who cannot transfer his pension to another unless this faculty has been expressly conceded to him (**Canon 1429**).

Pope Benedict XIV passed very severe laws against those clerics who sold their right of pension to others and against those who resigned their benefice in favor of another on condition of receiving a pension out of the benefice they were resigning.[6] The Committee for the Authentic interpretation of the Code ruled that the bishop may allow a pastor to resign his parish on the condition of receiving a pension from that parish for the rest of his life, provided the law of Canon 1429 is observed in the point that the pension may not exceed one-third of the net revenue of the parish.[7]

Power of the Bishop in Reference to Conversion of Benefices

1444. Benefices to which the care of souls is attached cannot be turned by the bishop into *non-curate* benefices, nor can he convert religious benefices into secular, nor secular into religious benefices. Simple benefices, on the contrary, may be converted by the local Ordinaries into curate benefices, provided there are no contrary explicit conditions laid down by the founder of the benefice (**Canon 1430**).

Chapter III

OF THE CONFERRING OF BENEFICES

1445. The Roman Pontiff has the right to confer benefices in the entire Church, and to reserve to himself the right to confer them (**Canon 1431**). The Cardinals in the churches of their title, and local Ordinaries within the territory of their diocese, have by presumption of law the right to confer vacant benefices. (If, therefore, anyone claims that their conferring is reserved, or that someone else has a right interfering with the free right of Cardinals and local Ordinaries, he must prove that there exists a law or a special concession which gives him a right to interfere.) The vicar-general cannot without a special mandate from his Ordinary confer benefices. The vicar-capitular (or any other administrator of a vacant diocese) can confer

[6] Const. "Universalis," August 29, 1741, and Const. "In sublimi," August 29, 1741; Gasparri, "Fontes Cod. Jur. Can.," I, 691–695.

[7] Cfr. App. III, 63, b.

parishes under the conditions mentioned in Canon 455, § 2, n. 3; he cannot confer other permanent benefices over which the bishop has the right of free appointment. If the Ordinary has not conferred the benefice within six months after he had certain knowledge of the vacancy, the conferring of the benefice devolves on the Apostolic See, with the exception of parishes where, for reason of peculiar circumstances of places and persons, the Ordinary judges it advisable to delay the definite appointment of a pastor, as Canon 458 points out (**Canon 1432**).[7a]

Coadjutors in benefices, with or without the right of future succession, can be appointed exclusively by the Holy See, except in the cases mentioned in Canons 475 and 476 (**Canon 1433**). These Canons not only allow, but command the bishop to appoint other clergy to assist a pastor who cannot take proper care of his parish either because of sickness or other disabilities, or because of a large or scattered Catholic population.

Benefices Reserved to the Holy See

1446. Benefices which are reserved to the Holy See cannot be validly conferred by inferior authorities (**Canon 1434**).

Besides all consistorial benefices and all dignities in cathedral and collegiate churches, as was specified in Canon 396, the following benefices alone are reserved to the Holy See, even though it be vacant:

(1) All benefices, *curate* and *non-curate*, which become vacant through the death, promotion, resignation, or transfer of Cardinals, Legates of the Roman Pontiff, major officials of the Sacred Congregations, Tribunals and Offices of the Roman Curia, and men belonging to the Papal Household (*Familiares Summi Pontificis*), though only as honorary members, at the time of the vacancy of their benefice;

(2) All benefices outside the Roman Curia which become vacant by the death of the holder of the benefice in the City of Rome;

(3) All benefices which have been conferred invalidly, when the conferring was vitiated by simony;

(4) Finally, all benefices on which the Roman Pontiff has laid hands either in person or through a delegate in one of the

[7a] Regarding delay caused by shortage of priests, cfr. App. III, 63, c.

following ways: If he has declared the election to a benefice null and void, or has forbidden the electors to proceed with the election; if he has accepted the resignation of a benefice; if he has promoted or transferred the beneficiary, or has deprived him of the benefice; if he has given the benefice to a man as a *commenda.*

Benefices conferred temporarily, and benefices subject to laical or mixed patronage, are never reserved to the Holy See unless this is explicitly stated. With reference to the benefices founded at Rome, the peculiar laws concerning their conferring shall be observed (**Canon 1435**).

Rules Regulating Valid Conferring of Benefices

1447. An ecclesiastical benefice cannot validly be conferred on a cleric who is unwilling to and who does not explicitly accept the conferring of it (**Canon 1436**). Nobody may confer a benefice on himself (**Canon 1437**). All secular benefices must be conferred for the life of the beneficiary, unless the contrary is stated either in the charter of the foundation, or established by immemorial custom, or by particular indult (**Canon 1438**).

1448. No cleric is capable of accepting and retaining in title or perpetual *commenda* several benefices which are incompatible in the manner defined in Canon 156. However, not only are two benefices incompatible when all their obligations cannot be simultaneously satisfied by the same beneficiary in person, but also when either of the two benefices suffices for the decent maintenance of the beneficiary (**Canon 1439**).

1449. Ecclesiastical benefices must be conferred without diminution, except as prescribed by Canon 1429 (**Canon 1440**). The same law is found in the Decretals. The man who receives a benefice is to get it without any curtailment of the benefits attached to it. There are two ways of diminishing the value of a benefice—either by taking part of the income away from the beneficiary or by adding to the duties of the benefice without a proportionate increase of the benefits. Canon 1429 gives the local Ordinary a limited right of imposing pensions on benefices by which the above-stated principle is to some extent modified, for, when a pension is imposed, the benefice is actually rendered less valuable to the man who obtains the benefice.[7b]

[7b] No contribution for seminary to be imposed, cf. App. III, 63, d.

Deductions from the revenue of benefices, compensations and payments to be made by a cleric to the one who confers the benefice, or to the patron, or to others at the moment when the benefice is conferred on him, are condemned as simoniacal (**Canon 1441**).

1450. Secular benefices are to be conferred on secular clerics exclusively; religious benefices on members of that religious organization to which the benefices belong (**Canon 1442**).

Installation in Benefices

1451. Nobody shall on his own authority take possession of a benefice conferred on him, nor shall he be installed without making the profession of faith, if the benefice be one for which the profession of faith is prescribed. In non-consistorial benefices the putting of the beneficiary in possession of the benefice (also called the *institutio corporalis*) rests with the local Ordinary, who can delegate another ecclesiastic to install the beneficiary (**Canon 1443**).

The installation by which the beneficiary takes possession of his benefice is to be made in the manner specified by particular law or by legitimate custom, unless the Ordinary for a just cause explicitly and in writing dispenses with this method or rite: in such a case the dispensation takes the place of the formal taking of possession. The local Ordinary shall specify the time within which the beneficiary must take possession; if the beneficiary fails to take possession within the specified time, the Ordinary may, in accordance with Canon 188, declare the benefice vacant, unless a just impediment prevented the beneficiary from taking possession (**Canon 1444**). Possession of a benefice may also be taken by a proxy appointed by special mandate (**Canon 1445**).

Conflicting Claims to a Benefice

1452. If a cleric who actually holds a benefice proves that he has been in undisputed and *bona fide* possession of a benefice for a space of fully three years of time, though perhaps his title to the benefice was invalid, he obtains the benefice by legitimate prescription, provided simony was not committed in securing possession of the benefice (**Canon 1446**).

A cleric who demands a benefice which has been in the undisputed possession of another, and which is for a certain reason claimed to be vacant, must in his written petition state the name of the possessor, the time of possession, and the special reason which proves that the possessor has no right to that benefice. The benefice, however, cannot be conferred on the petitioner until the case has been first decided in a regular trial held according to the rules of law (**Canon 1447**).

Chapter IV

OF THE RIGHT OF PATRONAGE

1453. The right of patronage comprehends the sum total of the privileges which, together with certain burdens, are conceded by the Church to Catholic founders of a church, chapel, or benefice, or also to those who have acquired the right of patronage from the founders (**Canon 1448**).

The Church wanted to encourage people of means to devote a portion of their wealth to the service of God—and thus indirectly relieve the poor people from the burden of building and endowing churches and other places of divine worship—by giving them certain rights over the church or benefice they had founded or endowed. Frequently the rights granted to founders were not used by them or their successors to the best interests of the Church, and in many instances they insisted absolutely on their rights but neglected their obligations. As these rights interfered with the free management of ecclesiastical affairs by the divinely appointed superiors of the Church, and there was a danger that the founders would antagonize rather than act in harmony with the ecclesiastical superiors, the Code in Canon 1450 abolishes henceforth the right of patronage, although it respects such right wherever acquired before the promulgation of the Code.

1454. In the United States the Second Plenary Council of Baltimore, confirming former decrees of the Provincial Councils of Baltimore, does not admit the existence of the right of patronage.[8] Wernz remarks that, in missionary countries where

[8] *Acta et Decreta C. Balt II,* n. 184.

there are no benefices in the strict sense of the term, and where the common law of the Church is not in force, the right of patronage over ecclesiastical offices is ordinarily not admitted.[9] For a while, mainly in the first half of the nineteenth century, there was a tendency apparent in many parts of the United States for lay trustees to claim the right of nominating the pastors of their parishes (besides other rights), because as trustees they were the representatives of the people who had built the church and who maintained it by their united offerings. Many years before, it had been ruled by the Church that no right of patronage is acquired by the congregation, or its lay representatives, if a church is built, endowed, maintained, etc., by voluntary offerings of the faithful.[10]

Various Kinds of Patronages

1455. The right of patronage is:

(1) *real* or *personal,* according as it adheres either to some object (*res*), or is vested directly in some person;

(2) *ecclesiastical, laical,* or *mixed,* according as the title by which one has the right of patronage is ecclesiastical, or laical, or mixed;

(3) *hereditary, family, tribal* (*gentilitium*), or *mixed,* according as it passes to the heirs, or to those of the family, or of the tribe, or to those who at the same time are heirs and members of the family or clan of the founder (**Canon 1449**).

If the title by which one acquires the right of patronage is ecclesiastical (e. g., if this right is attached to a certain ecclesiastical office, and through the office comes to the person), it is an ecclesiastical benefice. A laical benefice is based on a laical title (e.g., the foundation of a benefice by laical goods, acquisition of patronage through inheritance, etc.). A mixed patronage can be based, for instance, on the foundation of a benefice with both ecclesiastical and laical funds. If a patronage can be acquired by the heirs (no matter who is appointed by last will or succeeds by law), it is called an *hereditary* patronage. If the charter of the foundation restricts the right of succession to the patronage to the family of the founder, it is called a *jus*

[9] *Jus Decretalium,* II (3rd ed.), n. 411.
[10] Sacred Cong. of the Council, Nov. 19, 1729; Pallotini, XI, 114.

patronatus familiare; if it can pass to the remoter ancestors or descendants, it is a *jus patronatus gentilitium;* if one has to be both an heir and a member of the family or related to the founder, it is *jus patronatus mixtum.* The category into which the right of patronage falls, depends on the so-called *leges fundationis*—a kind of charter drawn up by the founder with the consent of the bishop.

Restriction of the Right of Patronage

1456. No right of patronage can in future be validly constituted under any title. The local Ordinary can: (1) grant spiritual suffrages, proportioned to the liberality shown, for a time or even perpetually, to the faithful who build a church either entirely or partly, or found benefices; (2) accept the foundation of a benefice under the condition that the benefice be for the first time conferred on the cleric who is the founder of the benefice, or another cleric designated by the founder (**Canon 1450**).

Rules Concerning Rights of Patronage Acquired before the Promulgation of the Code

1457. Local Ordinaries shall endeavor to persuade patrons to accept, instead of the right of patronage which they enjoy, spiritual suffrages, even perpetual ones, for themselves and the members of their family. If they are not willing to sacrifice the right of patronage, the Ordinary should try to get them to renounce at least the right of presentation of a cleric for the benefice. If the patrons do not agree to that, their right of patronage shall be governed by the following Canons (**Canon 1451**).

The Committee for the Authentic Interpretation of the Code has declared [11] that this Canon means to oblige the bishop to make an effort to induce the patrons to renounce their rights, although he cannot force or command them to do so.

[11] Cfr. App. III, 64, a.

Rights of Patrons Defined and Limited

1458. Elections and presentations by the faithful in general to parochial and other benefices, wherever they may exist, can be tolerated only if the people choose a cleric from among three proposed by the local Ordinary (**Canon 1452**).[11a]

The personal right of patronage cannot validly be transferred to infidels, public apostates, heretics, schismatics, persons enrolled in secret societies condemned by the Church, or to any person excommunicated by a declaratory or condemnatory sentence. The written consent of the Ordinary is required to transmit validly the personal right of patronage to others. The conditions of the charter of a foundation and the rule of Canon 1470 on the extinction of the right of patronage, must be adhered to. If there is question of the real right of patronage, and the property to which the right is attached passes into the hands of the persons mentioned in the first part of this Canon, the right of patronage remains suspended (**Canon 1453**). No right of patronage is admitted, unless it is proved by authentic document or other legitimate proofs (**Canon 1454**).

1459. The privileges of patrons are as follows:

(1) the right to present a cleric to the vacant church or vacant benefice;

(2) if a patron without his fault is reduced to great poverty, he is in equity entitled to receive sustenance from the church or benefice, provided there are sufficient revenues to fulfill the obligations of the church or benefice and to give proper support to the holder of the benefice. The patron is entitled to maintenance, though he had renounced his right of patronage in favor of the Church, and though a pension was reserved to the patron at the time of the foundation of the benefice, if such pension does not suffice to relieve his poverty;

(3) if the legitimate customs sanction it, the right to have in the church of their patronage the coat of arms of their family or ancestry, precedence before all other lay persons in processions and similar functions, and a more prominent seat in church but outside the sanctuary and without a canopy (**Canon 1455**).

Wives exercise the right of patronage personally; and minors through their parents or guardians, but, if the parents

[11a] Concerning popular presentation, cfr. App. III, 64, b.

or guardians are non-Catholics, the right of patronage remains suspended in the meantime (**Canon 1456**).

Right of Presentation Defined

1460. Unless the laws of the foundation or legitimate custom prescribe a shorter time, the right of presenting a cleric to a benefice must be exercised within four months from the time that the patron is notified of the vacancy by the authority who has the right to institute the cleric in the benefice. This rule applies to all rights of patronage, whether laical, ecclesiastical, or mixed. The patron must present one of the men who has successfully passed the *concursus* or the examinations, if it is a benefice which must be conferred by *concursus* (**Canon 1457**).

If the presentation has not been made within the prescribed time, the church or benefice may in that instance be conferred freely by the ecclesiastical authority. If a controversy arises, either about the right of presentation between the Ordinary and the patron or between several patrons, or about the right of preference between several men presented, and the controversy cannot be settled within the time prescribed for the presentation, the conferring of the benefice shall be suspended until the controversy is settled. Meanwhile, the Ordinary shall, if necessary, appoint an administrator of the vacant church or benefice (**Canon 1458**).

Several Patrons of One Benefice or Church

1461. If there are several independent patrons, they may for themselves and their successors make an agreement to exercise the right of presentation in rotation. This agreement is not valid, unless the written consent of the Ordinary be added; but, once this consent has been given, it cannot validly be revoked either by the same Ordinary or his successors against the will of the patrons (**Canon 1459**).

1462. If the right of patronage is exercised by a body (for instance, the Cathedral Chapter), that cleric is considered presented who has obtained the plurality of votes, as specified by Canon 101 in reference to elections. If after two ballots nobody has a plurality of votes, a third ballot is taken: if several candi-

dates are tied with the largest number of votes in this third ballot, so that nobody has a plurality of votes, all who have an equal number are to be considered presented. If several individual persons have the right of patronage, and they have not agreed among themselves to present candidates in rotation, that one is considered presented who has at least a relative plurality of votes; if several men are tied with the largest number of votes, all these are considered presented. The patron who has the right of patronage from several titles has as many votes in the presentation as he has titles. Every patron may, before the presentation is accepted (by the one presented), present not only one but several men, both simultaneously and successively, provided he does so within the time limited for presentation and does not exclude those whom he first presented (**Canon 1460**).

1463. Nobody can present himself, nor combine with other patrons to complete the number of votes necessary for his presentation (**Canon 1461**). The law does not forbid the presentation of one of the patrons, but the one who is to be presented cannot vote for his own presentation without violating Canon 1461, which forbids a patron to present himself.

1464. If the church or benefice is to be filled by *concursus* (competitive examinations), neither a clerical nor a lay patron can present any other cleric than one of those who has legitimately been approved by *concursus* (**Canon 1462**).[11b]

1465. The cleric presented must be qualified—that is to say, on the day of presentation, or at least on the day on which he accepts the presentation, he must have all the qualifications which are demanded either by the common law, or the particular law, or the charter of the foundation of the benefice in question (**Canon 1463**).

Admission of Presentation by the Local Ordinary

1466. The presentation must be made to the local Ordinary, who has the right to judge whether the person presented is qualified. The Ordinary must, according to Canon 149, make careful investigation and get the necessary information, even secretly if necessary, to form his judgment about the qualifications of the man presented. The Ordinary is not obliged to

[11b] For interpretation of this Canon, cfr. App. III, 64, c.

make known to the patron the reasons why he does not admit the person presented (**Canon 1464**).

If the person presented was rejected by the Ordinary as not qualified, the patron may, within the time specified by Canon 1457, present another person; if the time has elapsed through the neglect of the patron, he loses his right for that instance. If, after the rejection of the first man presented, the patron presents another and he also is rejected, the church or benefice may for that instance be filled by the free choice of the Ordinary. However, if the patron or the person presented appeals to the Holy See within ten days after the notification of the Ordinary that the candidate has been rejected, the conferring of the benefice is suspended until the end of the controversy, and in the meantime the Ordinary shall, if necessary, appoint an administrator to the vacant church or benefice. If the presentation is vitiated by simony, it is automatically void by law, and so is the appointment to the church or benefice, if it perhaps took place (**Canon 1465**).

Acceptance of Presentation by the Candidate and Canonical Institution

1467. If the cleric has been legitimately presented and found qualified and accepts the presentation, he has the right to canonical institution. The right to grant canonical institution or conferring of the benefice is vested in the local Ordinary; the vicar-general may give it by special mandate only. If several qualified men were presented, the Ordinary chooses the one whom he believes before God to be better qualified (**Canon 1466**).

The canonical appointment of a man whose presentation to any benefice has been accepted, though no care of souls is attached to it, must be granted within two months from the date of the presentation, if no impediment justifies a longer delay (**Canon 1467**). If the man presented renounces his claim before the canonical appointment, or if he dies, the patron has again the right to present another (**Canon 1468**).

Obligations of Patrons

1468. The obligations or duties of patrons are as follows:

(1) to advise the local Ordinary when they see that the goods of the church or benefice are squandered, but they may not interfere in the administration of these goods;

(2) to rebuild the church if it collapses, or to make the repairs which the Ordinary judges necessary, if they hold the right of patronage for reason of having built the church, unless the burden of rebuilding or repairing the church rests on others, according to the rules of Canon 1186;

(3) if the patron derives the right of patronage from the endowment of the church benefice, to supply the revenue, in case the income of the church or benefice fails to such an extent that divine worship cannot be carried on in that church with proper respect, or the benefice cannot be conferred for lack of income assuring the maintenance of the beneficiary.

If the church has collapsed or stands in need of necessary repairs, or if the revenue of the benefice fails, as stated in this Canon, the right of patronage remains suspended for the time. If the patron, within the time to be specified by the Ordinary under penalty of forfeiting forever the right of patronage, has rebuilt or repaired the church, or increased the revenue, the patronage revives; otherwise it ceases automatically without any further declaration (**Canon 1469**).

Cessation of the Right of Patronage

1469. Besides the case mentioned in the last paragraph of the preceding Canon, the right of patronage ceases:

(1) if the patron has renounced his right. The renunciation may be done by renouncing the entire right or part of the rights; his renunciation, however, can never affect the rights of other patrons if there are several in the same church or benefice;

(2) if the Holy See has recalled the right of patronage, or has permanently suppressed either the church itself or the benefice;

(3) if a legitimate prescription against the right of patronage has been established;

(4) if the property or object to which the right of patronage adheres has perished, or if the family, relatives, or line, to which the patronage is reserved by the charter of the foundation has become extinct. In the latter case, the patronage does not become an hereditary patronage, nor can the Ordinary validly permit the donation of the right of patronage to another;

(5) if, with the consent of the patron, the church or benefice is united to another of free conferment, or if, with the patron's consent, the church passes into the hands of a corporate body having the right of election, or into the hands of regulars;

(6) if the patron has attempted to transfer the right of patronage to another by a simoniacal agreement; if the patron falls into apostasy, heresy, or schism; if he has unjustly usurped, and retains, the goods and rights of the church or benefice; if he has, either in person or through another, killed or mutilated the rector or another cleric assigned to the service of the church of his patronage or of the benefice. Through the commission of these crimes the guilty patron alone loses the rights of patronage, with the exception of the last crime (killing or mutilating), by which his heirs also forfeit the right. The right is lost by these crimes after a declaratory sentence. Patrons who have incurred a censure or infamy of law, are, after a condemnatory or declaratory sentence, suspended from the exercise of the right of patronage for as long a time as the censure or infamy lasts (**Canon 1470**).

Special Concession by the Holy See of Right of Presentation Does Not Constitute Patronage

1470. If the Holy See concedes to somebody, either by Concordat or in any other way, the right to present a cleric for a vacant church or benefice, the right of patronage does not arise from this concession, and the privilege of presentation must be strictly interpreted according to the wording of the indult (**Canon 1471**).

Chapter V

OF THE RIGHTS AND DUTIES OF BENEFICIARIES

1471. Every beneficiary enjoys all the temporal and spiritual rights attached to his benefice from the moment of taking legitimate possession of his benefice (**Canon 1472**). Though the beneficiary has other goods besides those of the benefice, he may freely make use of the revenues of the benefice for his proper maintenance. He is, however, bound by obligation to spend the superfluous income for the benefit of the poor or charitable institutions without prejudice to the right ceded to Cardinals by Canon 239, § 1, n. 19 (**Canon 1473**). If the reception of a certain order is required for the obtaining of a benefice, the beneficiary must have received that order before the benefice is conferred on him (**Canon 1474**).

Duties of Beneficiaries

1472. The beneficiary is obliged to fulfill faithfully the special duties attached to his benefice, and he has besides the obligation to recite daily the Canonical Hours. If, without legitimate excuse, he fails to satisfy the obligation of reciting the Canonical Hours, he forfeits a portion of the income in proportion to the extent of his neglect, and he is bound to give that portion of the income to the church fund, or to the diocesan seminary, or to the poor (**Canon 1475**). Authors observe in reference to this penalty that, if the income of the benefice is so small that it is a meager salary even for the other duties attached to the benefice (besides the obligation of the Divine Office), the obligation to sacrifice a portion of the income for the neglect of the Divine Office is not a grave obligation.

1473. The beneficiary must administer the goods and property of his benefice according to the rules of Canon Law, and, if through neglect or other fault he injures the benefice, he is bound to repair the damage, and is to be forced by the local Ordinary to do so; if he is a pastor, he may be removed from the parish in the manner prescribed by Canons 2147–2161 (**Canon 1476**).

The expenses connected ordinarily with the administration of the goods of the benefice and the collecting of the revenue must be borne by the beneficiary. Expenditures for extraordinary repairs of the residence belonging to the benefice must be borne by those who have the obligation to repair the church of the benefice, unless the charter of the foundation or legitimate agreements or customs rule otherwise. Minor repairs incumbent on the beneficiary must be made as soon as possible to avert the necessity of greater repairs (**Canon 1477**). The local Ordinary is under obligation to ensure, even through the vicars-foranes (deans), that the goods of benefices are conserved and properly administered (**Canon 1478**).

1474. In renting the goods of the benefice, it is forbidden, without the permission of the local Ordinary, to collect the rent in advance for more than six months. In extraordinary cases the Ordinary shall make prudent regulations so that such renting shall not impair the interests of a church or institution or of the successors to the benefice (**Canon 1479**).

1475. Unless legitimate custom or special and properly approved laws have established another mode of just settlement, the annual income of the benefice shall be divided between a new beneficiary and his predecessor or (in case of death) his heirs, in proportion to the time that each has held the benefice. In this division of the revenue, all the receipts and expenditures of the year shall be taken into consideration (**Canon 1480**).

1476. The income accruing during the vacancy of a benefice, after the deduction of the expenditures of any kind and the payment of the salary of the administrator mentioned in Canon 472, n. 1, is to be divided as follows: one-half goes to the endowment of the benefice or the common fund of beneficiaries of the church, the other half goes to the sacristy, or church fund. If there exists a legitimate custom by which the entire income accrued during the vacancy goes to the common good of the diocese, that custom is to be followed (**Canon 1481**).

1477. With reference to the so-called annates (*media annata*), these shall be retained in places wherever existing, and the statutes and laudable customs in force in the various places concerning these annates shall be observed (**Canon 1482**). The *media annata* was a tax levied upon the first year's income of a non-consistorial benefice and paid to the Roman Pontiff by

the beneficiary: according to Vermeersch-Creusen this tax amounted to one-half the income.[12]

1478. The goods of the *mensa episcopalis* must be carefully administered by the bishop. The episcopal residence is to be kept in good condition, and must be repaired with the funds of the *mensa episcopalis,* whenever this burden does not by special law rest on others. Every bishop must see that an exact inventory is prepared of the furniture and movable property pertaining to the episcopal residence and belonging to the *mensa episcopalis,* in order that such property may be transmitted safely and in its entirety to his successor in the bishopric (**Canon 1483**). The *mensa episcopalis* is considered a legal person in Canon Law. In the United States the bishopric as such is usually not endowed; wherefore, the bishops get their salary through the *cathedraticum* and other assessments on the parishes for diocesan expenditures.

Chapter VI

OF RENUNCIATION AND EXCHANGE OF BENEFICES

1479. The Ordinary shall not accept the renunciation of a benefice by a cleric in major orders, unless it is certain that he has from other sources the necessary means for respectable maintenance, or unless he has made his religious profession as prescribed in Canon 584 (**Canon 1484**). The renunciation of the benefice which was the cleric's title of ordination is null and void, unless explicit mention is made that the cleric was ordained under the title of that benefice, and another legitimate title is substituted with the consent of the Ordinary (**Canon 1485**). The titles of ordination are defined by Canon 979 of the Code. The title of a benefice is the ordinary title for secular clerics; patrimony and pension are secondary titles. The extraordinary title of "service of the diocese" is admitted, when none of the three other titles is available (cfr. Canon 981).

1480. The renunciation of benefices in favor of others, or under some condition which affects the conferring of the bene-

[12] "Epitome," II, n. 806. Cfr. Ferraris, "Bibliotheca," I, 244, s. v. *Annatæ.*

fice or the use of its income, cannot be accepted by the Ordinary except in cases where the benefice is in litigation and the renunciation is made by one of the litigants in favor of the other (**Canon 1486**). The Committee for the Authentic Interpretation of the Code decided that the local Ordinary can accept the renunciation of a parish under the condition that the resigning pastor receive a pension from the parish for the rest of his life. The pension may not exceed one-third of the net revenue of the parish, as stated in Canon 1429.[13]

Exchange of Benefices

1481. The exchange of two benefices may be validly made only when the needs or interest of the Church, or another just cause, requires it: the exchange must never revert to the detriment of others, and the consent of the patron (if there be any) and also of the local Ordinary is required. The vicar-capitular cannot give the consent, and the vicar-general can give it by special mandate only. The precepts of Canon 186 regarding the formalities of resignation must be observed in every instance. The Ordinary shall within one month either give or refuse his consent; the exchange is valid from the moment when the consent of the Ordinary is given. The exchange of benefices cannot be permitted by the Ordinary if both or either of the two benefices is reserved to the Holy See (**Canon 1487**).

If the benefices to be exchanged are unequal, no compensation may be made by the reservation of some of the revenues of the benefice, or by payments of money, or payment of anything that has money value. The exchange cannot be made between more than two beneficiaries (**Canon 1488**).

TITLE XXVI

OF OTHER NON-COLLEGIATE INSTITUTES OF THE CHURCH

1482. Hospitals, orphanages, and other like institutions destined for works of religion or for spiritual or temporal charity, may be erected by the local Ordinaries, and by their decree made

[13] Cfr. App. III, 63, a and b.

legal persons in the Church. The local Ordinary shall not approve these institutions unless the purpose of their foundation is really useful, and unless after mature consideration he believes the endowment sufficient, or there is a reasonable certainty that sufficient means will be obtainable to realize the purpose of the institution. The administration of the goods of these institutions is in the hands of the rector of each institution, according to the rules laid down in the charter of the foundation. The rector is bound by the same obligations and enjoys the same rights as the administrators of other ecclesiastical goods (**Canon 1489**).

1483. In the charter of the foundation the founder should accurately define the entire constitution of the institute, its purpose, the endowment, administration and government, the use of the revenue, and the successor to the goods in case of the extinction of the institute. This charter should be made in duplicate, and one copy is to be kept in the archives of the institute, and the other in the diocesan archives (**Canon 1490**).

1484. The local Ordinary has the right and duty to visit all institutions of this kind, even those which are erected as a legal person and however exempt. Even though the pious foundation has not been created a legal person, and has been entrusted to a religious community, the foundation is entirely subject to the jurisdiction of the local Ordinary if the religious house belongs to a diocesan organization. If the religious in charge of the pious foundation belong to an organization of Papal Law, the foundation is subject to the supervision of the local Ordinary in all matters pertaining to the teaching of religion, moral conduct, exercises of piety, and the administration of the sacraments (**Canon 1491**).

1485. Even though a pious institute is exempted from the jurisdiction and visitation of the local Ordinary by the terms of the foundation, or by prescription, or by Apostolic privilege, the local Ordinary has nevertheless the right to demand an account of its finances, every contrary custom being condemned. If the founder of a religious or charitable institute desires that the administrators shall not be obliged to give an account to the local Ordinary, the foundation shall not be accepted (**Canon 1492**).

It is a principle firmly established in Canon Law that the

local Ordinary is the supreme supervisor of all ecclesiastical goods and property in his territory. The law makes special provision for the management of the finances of religious congregations, in so far as their own affairs are concerned. If, however, they are trustees or administrators of ecclesiastical goods that are not strictly speaking goods of their own community but ecclesiastical goods devoted to religious and charitable purposes, they are bound to give an account of the management of the finances to the local Ordinary. The Code is very explicit on this point, and forbids the Ordinary to establish a pious foundation for religious or charitable purposes as an ecclesiastical person or entity, if the founder wants it in its financial administration to be independent of the authority of the local Ordinary.

1486. The local Ordinary shall see that the pious intentions of the faithful expressed in the foundation of religious or charitable institutes are fully complied with (**Canon 1493**). Without the permission of the Holy See, these institutes cannot be suppressed, united, or diverted to uses foreign to the intentions of the founders, unless the agreement or charter drawn up at the time of their foundation rules otherwise (**Canon 1494**).

PART SIX

OF THE TEMPORAL GOODS OF THE CHURCH

1487. The Catholic Church and the Apostolic See have an inherent right freely and independently of the civil power to acquire, keep, and administer temporal goods for the prosecution of the proper purposes of the Church. Also individual churches, and other moral persons which have been created legal persons by the ecclesiastical authority, have the right to acquire, keep and administer temporal goods, according to the laws of the Sacred Canons (**Canon 1495**). The Church has, moreover, the right independently of the civil power to demand from the faithful the necessary means for conducting divine worship, for the decent maintenance of the clergy and other ministers, and for her other proper purposes (**Canon 1496**).

The right which the Church here claims follows as a logical sequence from the divine institution of the Church. If one admits that Christ established the Church as a society which was to continue His work in the spiritual government and guidance of mankind by organized effort, one must also admit that Christ gave that Church all the powers and rights incident to the work He committed to her. These fundamental questions are not dealt with at length in Canon Law, since they belong to other branches of theology. The reader may consult the standard works on the *Jus Publicum Ecclesiasticum*, which treat these points in detail.[1]

1488. By the term *ecclesiastical goods* are understood all temporal goods, corporeal (movable and immovable) and incorporeal, real and personal, which belong either to the Universal Church, or to the Apostolic See, or to individual ecclesiastical legal persons. By *sacred goods* are meant those which have been dedicated to divine worship by consecration or blessing; by *precious goods* (*pretiosa*) those which have a notable value for artistic or historical reasons or because of the material of which they are composed (**Canon 1497**).

In the succeeding Canons the term *Church* signifies not only the Universal Church or the Apostolic See, but also every legal person in the Church, unless the contrary is apparent from the context of the law, or the nature of the matter under discussion (**Canon 1498**).

TITLE XXVII

OF THE ACQUISITION OF ECCLESIASTICAL GOODS

1489. The Church can acquire temporal goods by all just means which are sanctioned in the case of others by the natural or the positive law. The ownership of the goods belongs, under the supreme authority of the Apostolic See, to that legal person which acquired these same goods legitimately (**Canon 1499**).

The Church proceeds in the same manner as the State in the

[1] Cardinal Cavagnis, "Institutiones Juris Publici Ecclesiastici" (Rome, 1906). See also Cappello, "Summa Juris Publici Ecclesiastici" (Rome, 1923), wherein a list of the special works on this subject is given; Ryan and Millar, "The State and the Church" (New York, 1924).

matter of property. In civil law there are the individual citizens holding right and title to their own property, and there are corporations created by law to have and hold property. The Church is chiefly concerned with property rights of the legal ecclesiastical persons, for the property of individual persons (for instance, a priest or a bishop) is not ecclesiastical property, if they hold it in their own right. Though a priest may have no other property but the savings from his salary received as an assistant or a pastor, still he holds that in his own right, and it is not ecclesiastical property.

1490. When the territory of a legal ecclesiastical person is divided so that either a part of it is united to another legal person, or a new and distinct legal person is created by the separated territory, the common goods which were destined for the benefit of the entire territory, and also the debts contracted for the whole territory, shall be divided in proper proportion and in all fairness by the competent ecclesiastical authority which orders the division. The intentions of founders and benefactors, acquired legal rights, and special laws governing legal persons must be respected (**Canon 1500**).

1491. If a legal person ceases to exist, its goods shall belong to the immediately superior legal person, subject always to the will and intentions of the founders and benefactors, lawfully acquired rights, and the special laws which governed the extinct person (**Canon 1501**).

1492. The payment of the *decimæ* and *primitiæ* shall be governed by the special laws and laudable customs of each country (**Canon 1502**). The *decimæ* (tithes or tenth part) of the fruits of one's property or income were demanded in ancient times by the law of the Church as an annual tax to the Church. Pope Gregory VII condemns in severe terms those who refused to pay the *decimæ*, saying that they should know that they are guilty of the crime of sacrilege and incur the danger of eternal damnation.[2] The Council of Trent insists on the payment of these tithes.[3] At present there is no general law demanding payment of tithes, but, if there is a special law or custom in some country requiring their payment, the Church insists on its observance. The *primitiæ* (or first fruits of fields, vine-

[2] *Decretum Gratiani*, c. 1, C. XVI, qu. 7.
[3] Sessio XXV, cap. 12, *De Reform.*

yards, orchards, gardens, etc.) originally referred to the first crop that was obtained from new fields or gardens, the first offspring of animals, etc. Following the example of the Old Testament, the Christians in many places introduced the custom of offering the first fruits.[4]

1493. Private individuals, both clerics and laymen, are forbidden to collect alms for any charitable or ecclesiastical institution or purpose without the written permission of the Apostolic See or their proper Ordinary and of the Ordinary of the place where the collection is to be made. The regulations of Canons 621–624 regarding the collection of alms by religious organizations are not affected by this Canon (**Canon 1503**).

Taxation Power of Local Ordinaries

1494. All churches or benefices subject to the jurisdiction of the bishop, and all confraternities of lay persons, must pay annually to the bishop as a token of submission the *cathedraticum* or a moderate tax, the amount of which is to be determined in accordance with the regulations of Canon 1507, unless it has already been fixed by ancient custom (**Canon 1504**).

The Sacred Congregation of the Council has declared that the *cathedraticum* must be the same for all churches, chapels, and benefices subject to the bishop; it is not to be figured in proportion to the revenue of a church, or the number of parishioners, etc. The Bishops of France had complained that they could not pay for the maintenance of the chancery office from the ordinary fees, and needed therefore some source of revenue to defray the expenditures. The Sacred Congregation states that this is not the purpose of the *cathedraticum,* and that they could assign part of the contributions of the Catholics of France (known as the *denier du culte*) to the chancery office.[5]

The Sacred Congregation of the Council has ruled that the *cathedraticum* is not due to the administrator or any other person who rules the diocese during the vacancy, for during the vacancy no *cathedraticum* is to be paid.[6]

1495. If some special need of the diocese requires it, the bishop may impose an extraordinary small tax on all benefi-

[4] Ferraris, "Bibliotheca," VI, s. v. *Primitiæ.*
[5] Cfr. App. III, 65, a.
[6] August 20, 1917 (*Acta Ap. Sedis,* IX, 497).

ciaries, both secular and religious, besides the seminary tax mentioned in Canons 1355–1356 and the pension on benefices spoken of in Canon 1429 (**Canon 1505**). Other taxes for the benefit of the diocese, or in favor of a patron, may be imposed by the bishop on churches, benefices, and other ecclesiastical institutions subject to him only at the time of foundation or consecration; no tax may be imposed on Mass stipends, whether ordinary stipends or those of foundation Masses (**Canon 1506**).

1496. Subject to the precepts of Canons 1056 and 1234, the determination of the fees to be paid throughout the whole ecclesiastical province for various acts of the so-called voluntary jurisdiction [which means here the concession of dispensations and other favors], for the execution of rescripts of the Holy See, or on the occasion of the administration of the Sacraments and sacramentals, is vested in the Provincial Council or a convention of the bishops of the province: however, such determination has no force until it has been first approved by the Holy See. The fees for judicial acts are to be determined according to the precept of Canon 1909 (**Canon 1507**).[6a] In matrimonial dispensations the local Ordinary cannot demand any more than a small offering to cover the expenditures of the chancery office (cfr. Canon 1056); the stipend for funeral services may be fixed by each local Ordinary (cfr. Canon 1234).

Acquisistion of Ecclesiastical Goods by Prescription

1497. The method of acquiring goods and rights and freeing oneself from obligations by prescription, as found in the civil law of the individual countries, is adopted by the Church in connexion with ecclesiastical goods, except within the limitations prescribed by the following Canons (**Canon 1508**).

1498. The following goods and rights are not subject to prescription:

(1) those which are of divine law, whether natural or positive;

(2) those which can be obtained only by Apostolic privilege;

(3) those spiritual rights which lay persons are incapable of acquiring, if there is question of prescription in favor of lay persons;

[6a] Concerning taxes by Provincial Councils, cfr. App. III, 65, b.

(4) the certain and undisputed boundary lines of ecclesiastical provinces, dioceses, parishes, vicariates and prefectures Apostolic, abbacies and prelatures *nullius;*

(5) stipends and obligations of Masses;

(6) ecclesiastical benefices without title;

(7) the right of visitation and obedience, if this would entail that the subjects cannot be visited by any prelate and are no longer subject to any prelate;

(8) payment of the *cathedraticum* (**Canon 1509**).

As neither the ecclesiastical nor the civil authority has power to change matters regulated by the divine law, no human authority can tolerate prescription which involves a violation of the divine law. Thus, for example, certain spiritual powers and rights are by the law of Christ attached to the office of the Supreme Pontiff and to that of the bishop, and in the case of these no prescription avails. Those things which cannot validly be done except by Apostolic privilege (e.g., the administration of Confirmation or the conferring of the tonsure and minor orders), cannot be obtained by prescription. Lay persons cannot acquire those spiritual rights for the possession of which they are incapacitated either by divine or by ecclesiastical law (e.g., laymen are incapable by divine law of holding ecclesiastical jurisdiction; by ecclesiastical law they are incapacitated from acquiring the right of patronage, cfr. Canon 1450). The rule of the Code against the change of boundary lines between ecclesiastical provinces, dioceses, and parishes by prescription, is taken from the former law;[7] if the boundary lines are uncertain or disputed, prescription is admitted.

1499. Mass stipends and the obligation to apply Holy Mass for a certain intention are not subject to prescription. The offering made for the application of Mass belongs to the priest who said the Mass for the intention of the donor, and the Church does not admit prescription in violation of the right of the priest to the offering. On the other hand, the priest who is obliged to apply Mass for a certain intention because of a stipend accepted by him, or in virtue of a benefice which he holds and to which the obligation of applying a certain number of Masses for certain intentions is attached, cannot free him-

[7] *Decretales Greg. IX*, c. 9, *De Præscriptionibus*, lib. II, tit. 26; and c. 4, *De Parochis et alienis Parochianis*, lib. III, tit. 29.

self from the obligation by prescription. If the obligation to apply certain Masses rests with a body of men (e.g., the Cathedral Chapter), and the statutes of this body places the obligation on certain of its members, prescription may put the burden on other members, as was admitted by the Sacred Congregation of the Council.[8] The Code is not opposed to this kind of a prescription, for in the case cited the prescription does not involve either the Mass stipends or the obligation of applying the Masses: the entire Chapter gets the benefit of the money or property, which was given to the Chapter with the obligation of saying some Masses for the donor; the fulfillment of the obligations of the Chapter is apportioned merely by the statutes of the Chapter, and against these statutes prescription may be invoked.

1500. According to Canon 147, ecclesiastical offices cannot be obtained without appointment by the competent ecclesiastical superior; the same rule applies to benefices, because a benefice consists of a sacred office with the right to receive the income from the goods with which the office is endowed (cfr. Canon 1409). Without the title to a benefice, a cleric cannot obtain a benefice by prescription. The appointment to the benefice may be invalid, but there must be some title under which apparently the benefice was rightfully obtained. The *titulus coloratus* (the color or appearance of a true title, by which one holds a benefice) suffices, and, according to Canon 1446, if he has remained in undisputed possession for three years, provided no simony was committed in securing this possession, the cleric obtains the benefice by legitimate prescription. Good faith, however, is necessary, not only when he first took possession of the benefice, but also for the entire three years necessary to get valid title to the benefice by prescription (cfr. Canon 1512).

1501. The right of visitation and the right to command obedience are proper to the ecclesiastical superior. The essential constitution of the Catholic Church declares that all members of the Church are subject to the Supreme Pontiff, and that, besides obedience to the Supreme Pontiff, the inhabitants of a diocese or the subjects of a religious organization owe obedience also to the head of the diocese or the religious organization. Canon Law admits prescription in connexion with the rights of

[8] April 27, 1901 (*Acta S. Sedis,* XXXIV, 100).

inferior authorities, but no prescription is or can be admitted in the Church by which one can free oneself from the rights of every superior authority. The Church has admitted the exemption of certain religious organizations from the authority of the local Ordinary by making the organizations directly subject to the Holy See, but even this exemption has been considerably reduced.[9]

1502. The *cathedraticum* is defined by the Code as a token or acknowledgment of the submission and obedience to the bishop of all legal ecclesiastical persons of the diocese (cfr. Canon 1504), and no prescription excuses one from the duty to pay the *cathedraticum.*

1503. Sacred things which may be possessed by private individuals can be acquired by prescription by private persons, who however may not use them for profane purposes. If these things have lost their consecration or blessing, they may be acquired and used for profane—but not mean or unworthy—purposes. Sacred things which may not be possessed by private persons cannot be acquired by prescription by such persons; one legal ecclesiastical person can acquire through prescription sacred things owned by another legal ecclesiastical person (**Canon 1510**). The legal ecclesiastical person holds a more favorable position in so far as private individuals cannot make use of the right of prescription in the case of sacred things owned by legal persons (church, charitable or religious institutions), while the legal person is not prohibited from using the right of prescription against things held by private individuals.

1504. Only a prescription of one hundred years' duration is valid in the case of immovable property, precious movable goods, and rights and personal and real claims of the Holy See. Goods, property, and rights of any other legal ecclesiastical person can be acquired by a prescription of thirty years (**Canon 1511**).[9a]

1505. No prescription is valid, unless it is based on good faith, not only at the moment of entering into possession but during the whole time required for prescription (**Canon 1512**).

The general principle of Canon 1508 that the Church adopts in its Code the civil law on prescription is modified in certain

[9] *Decretales Greg. IX*, cc. 12 and 16, *De Præscript.*, lib. II, tit. 26.
[9a] Cfr. App. III, 5, d.

points by Canons 1509–1512. First, the Church excepts certain goods and rights from prescription (cfr. Canon 1509); it modifies the right of prescription in reference to sacred things (cfr. Canon 1510); furthermore, it makes certain persons privileged, namely, the Apostolic See and legal ecclesiastical persons (cfr. Canon 1511). The exception in favor of the Holy See is the same as it was in the law of the Decretals; the exception in favor of the other legal ecclesiastical persons extended to forty years in the former Canon Law, while the Code limits the period to thirty years.[10] If, by special concession of the Holy See, some ecclesiastical legal person (e.g., certain religious Orders) have received the privilege from the Holy See that only a prescription of fifty, sixty, or more years applies in the case of their goods and rights, that privilege still exists.

A very important canonical rule of prescription is that which states that good faith is essential, not only at the beginning, but during the entire period of prescription. In the civil law the question of good faith is not of much importance, and it cannot be, because good faith is mostly a matter of the internal forum. The Fourth Lateran Council was very emphatic in demanding good faith in the beginning as well as during all the time requisite for prescription, and declared that no prescription, canonical or civil, was valid without good faith.[11]

In the civil law of the United States we have prescription chiefly in reference to rights over real estate, adverse possession of the real estate itself, and the statute of limitations which bars claims for payment of debts after a certain period. If one allows, even by mere inaction, another to use one's real estate or exercise certain rights over it (e.g., the use of a path or driveway through the property) for the statutory limit of time (which varies in different states, but is usually twenty years), the latter has a vested right to use the property or exercise that right over it. The adverse possession of another's land, if occupation of the land is taken openly and remains undisturbed for the statutory period (usually twenty years or less), ripens into a title to the land. The statute of limitations has the effect that certain debts cannot be enforced by the creditor, if his claim extends back beyond the statutory period of time.

10 *Decretales Greg. IX*, cc. 14 and 8, *De Præscriptionibus*, lib. II, tit. 26.
11 *Decretales Greg. IX*, c. 20, *De Præsc.*, lib. II, tit. 26.

That period varies in the different states, not only in reference to different kinds of debts, but even in regard to the same kind of debts. The law, however, admits that the debt itself is not wiped out by the statute of limitation, but the creditor is barred from enforcing the debt, if the debtor avails himself of the statute and pleads it in his defence. The Code does not admit any prescription without good faith. If, therefore, a person knows that he owes a debt and has not paid it, no lapse of time frees him from the obligation to pay the debt. Good faith is likewise required in prescription which affects real estate, either as to the title to land, the acquisition of rights over it, or the escape from burdens resting on one's real estate. Without good faith, the lapse of the statutory time specified by the civil law does not confer any rights in conscience.[12]

Donation and Bequests in Favor of Religion or Charity

1506. Persons who are entitled by the natural and the ecclesiastical law to dispose freely of their goods, may relinquish them in favor of religion or charity by direct donation or by a donation to take effect after their death. In last wills made in favor of the Church the formalities of the civil law should, if possible, be complied with; if they were omitted, the heirs should be admonished to fulfill the wish of the testator (**Canon 1513**).

In the disposal of one's goods in favor of religion or charity, a person has full freedom of action, if no obstacle is raised by the natural or the ecclesiastical law; the civil law is not considered in this matter, except that the Church urges the donor to comply with the formalities of the civil law to avoid difficulties. It is evident that the Church claims exclusive jurisdiction over donations and bequests in favor of religion or charity. Before the promulgation of the Code it was disputed whether donations and last wills made in favor of religion or charity by a person who has the right to dispose of his goods, were valid and binding in conscience, if they were made without the formalities of the civil law, and were therefore considered invalid before the State. The Code asserts the exclusive jurisdiction of the Church over this matter, and the commentators

[12] Tanquerey, "Synopsis Theol. Moral." (5th ed.), III, 101.

on the Code seem to agree that the Code closes the controversy. Vermeersch-Creusen explain why Canon 1513 uses the mild expression "moneantur heredes"—namely, to avoid pressing the obligation too hard and disturbing, perhaps, the good faith of persons who believe that, when the civil law pronounces the donation or bequest invalid, they can follow the law.[13] The opinion that one might follow the civil law in bequests to religion or charity never found many supporters, and the Sacred Penitentiary plainly held the contrary, when, in a case decided January 10, 1901, it said that the practice of this Sacred Tribunal was to consider the *legata pia* (legacies in favor of religion or charity) valid and binding in conscience, but that the heirs were usually permitted by the Sacred Penitentiary to make a friendly settlement with the church or charitable institute in whose favor the legacy was left.[14]

1507. The will of the faithful who leave their goods by donation or last will to religion or charity shall be most faithfully executed, even in reference to the manner of administration and application of the goods, subject to the law of Canon 1515 (**Canon 1514**). The Code here speaks of two kinds of donations —the donation pure and simple, and the donation "mortis causa," which is conditioned on the death of the donor and in the civil law of the United States falls under the general class of conditional gifts. The Church strictly demands that the wishes of the donor who favors a church or charitable cause be carried out in the manner desired by him, unless he has attached a clause which denies the Ordinary the right to execute and supervise these donations and bequests.

1508. The Ordinaries are the executors of all donations and bequests made in favor of religion or charity. In virtue of this right, the Ordinaries have power and are obliged to see, even by visitation, that the pious intentions are complied with; other delegated executors must give an account to the Ordinary after they have performed their office. Clauses denying this right of the Ordinaries, if added to last wills, are to be ignored (**Canon 1515**).

The Code states that "Ordinaries" are executors; the local Ordinaries and the major religious superiors of exempt organi-

[13] *Epitome*, II, n. 835.
[14] *Acta S. Sedis*, XXXIV, 384.

zations are included in this term. If the donation or bequest or legacy is made in favor of an exempt religious organization in such a manner that it is destined for the Order or Congregation itself, the major religious superior of the exempt religious is the executor and supervisor of the donation or bequest; if it is given to the religious in favor of some work of charity or religion which they direct, the local Ordinary is the executor and supervisor of the donation or bequest (cfr. Canons 1491–1492).

1509. The cleric or religious who has, either by way of donation or by last will, received goods in trust for pious causes, must notify the Ordinary concerning the trusteeship, and describe all such goods, both movable and immovable, with the obligations attached to them. If the donor has explicitly and absolutely forbidden all reference to the Ordinary in this manner, the cleric or religious shall not accept the trust. The Ordinary must demand that the goods received in trust be safely invested, and supervise the fulfillment of the pious intentions of the donor, as provided by Canon 1515 (**Canon 1516**). If a religious is put in trust of goods left in favor of any church of the place or of the diocese, or to help the residents or pious works of the diocese, the Ordinary spoken of in this Canon is the local Ordinary; otherwise, he is the Ordinary of the religious.

The law of the Decretals[15] and the Council of Trent[16] already contained the same regulation as Canon 1516. All funds donated or bequeathed for purposes of religion and charity in the diocese are under the supervision of the local Ordinary; the only exception is made in favor of exempt religious or clerical organizations for donations and bequests made in favor of the religious themselves and their churches and houses, in which cases the Ordinary of the religious has the obligation to see that the will of the donor is accomplished, and that the obligations attached to the donation or bequest are fulfilled. In demanding that a report be made to the Ordinary of all donations and bequests, the Code has in view, as Cocchi remarks,[17] cases in which a donation or bequest necessitates a

[15] *Decretales Greg. IX*, cc. 3, 6, 17, 19, *De Testamentis*, lib. III, tit. 26.
[16] Sessio XXII, c. 8, *De Reform.*
[17] *Commentarium*, VI, n. 195.

continued administration, and not cases in which persons donate or leave by last will a certain sum of money either to buy some specified articles or to go into the common fund (e.g., of a hospital, childrens' home, parish church, etc.). In the general report which these churches and institutions must render to the local Ordinary, these donations and bequests must of course also be specified and accounted for. Though the Code implies that a religious may be a trustee of funds given for religion or charity, the Constitutions of the different organizations must be consulted to ascertain whether perhaps the particular Order or Congregation forbids it, as is done by the Constitutions of the Order of Friars Minor.[18]

1510. The reduction, mitigation, and commutation of testamentary requests is reserved to the Holy See, and shall be done only for a just and necessary cause. The local Ordinary has no power to modify last wills, unless the founder has explicitly conceded it to him. If, however, through no fault of the executors, the execution of the imposed obligations has become impossible because of a decrease of the revenue or some other reason, the Ordinary, after having heard all interested parties and adhering in so far as possible to the will of the founder, may reduce the obligations according to the laws of equity; the reduction of Masses, however, is always reserved exclusively to the Holy See (**Canon 1517**).

Canon 1517 speaks of last wills only, for, if the donor is still living and the income of the fund he donated for some religious or charitable purposes decreases, a readjustment can be made with his consent. The Code grants power to the local Ordinaries to readjust the obligations of last wills in the emergency mentioned in Canon 1517; this right is reserved to the *local* Ordinary to the exclusion of Ordinaries of exempt clerical organizations of religious. The Council of Trent had ruled: "In alterations of last wills—which alterations ought not to be made except for a just and necessary cause—the bishops, as delegates of the Apostolic See, shall, before the alterations aforesaid are carried into execution, ascertain that nothing has been stated in the prayer of the petition which suppressed what is true or suggests what is false." [19]

[18] *Regula et Constitutiones Generales Fratrum Minorum* (Quaracchi, 1922), cap. IV, n. 234.

[19] Sessio XXII, cap. 6, *De Reform.* (ed. by Waterworth). In refer-

TITLE XXVIII

OF THE ADMINISTRATION OF ECCLESIASTICAL GOODS

1511. The Roman Pontiff is the supreme administrator and dispenser of all ecclesiastical goods (**Canon 1518**).

The title or ownership of ecclesiastical goods is vested in the individual legal ecclesiastical person, but it is an ownership of a peculiar type which in effect approaches trusteeship. The legal person who holds the title to church property and goods, is not free to use and dispose of the goods at will, as the owner of private property can do. Canon Law regulates the use and administration of ecclesiastical goods. That the Roman Pontiff is by his very office the supreme administrator and dispenser of all ecclesiastical goods, is evident from the very constitution of the Catholic Church. Great as his powers are as supreme administrator, they are limited by the very nature of ecclesiastical goods, which are held in trust by ecclesiastical persons for the purposes of charity and religion.

1512. The local Ordinary has the duty of diligently supervising the administration of all ecclesiastical goods in his territory, with the exception of those goods which have been withdrawn from his jurisdiction; if legitimate prescription gives him greater rights, such prescription stands. Within the limits of the common law and with due regard to the rights acquired by others, legitimate customs and circumstances, the Ordinaries shall issue timely instructions for the regulation of the entire matter of the administration of ecclesiastical goods within their territories (**Canon 1519**).

Under the present Title (XXVIII), the goods of religious organizations are not directly treated, for that part of the Code which deals especially with laws for religious contains a special chapter on the administration of temporal goods by religious (cfr. Canons 531–537; above, Volume I, 202 sqq.).

The Code does not describe the local Ordinary—as it did the Roman Pontiff—as the administrator of all the ecclesiastical goods of his territory, but as a supervisor or inspector.

ence to the reduction of Masses, the Committee for the Authentic Interpretation of the Code declared, July 14, 1922, that the Ordinary can reduce Mass obligations, if the document or charter of the foundation expressly gives him that right (*Acta Ap. Sedis,* XIV, 529).

The individual ecclesiastical persons hold the title, and are the actual administrators of the ecclesiastical goods proper to that legal person. From this it follows that, while the local Ordinary has the right and duty to pass proper regulations for the administration of ecclesiastical goods in the territory of his jurisdiction, he cannot interfere in the ordinary administration of the various legal persons as long as they act within the law.

Diocesan Board of Administration

1513. For the proper discharge of this duty, every Ordinary shall establish in his episcopal city a board of administrators, which is to consist of the Ordinary, as president, and two or more qualified men who should, in so far as possible, be familiar also with the civil law. The members of the board are to be appointed by the bishop after consultation with the Cathedral Chapter (diocesan consultors), unless some other equivalent provision has already been legitimately made by special law or custom.

Persons related to the local Ordinary by blood relationship or affinity in the first or second degree cannot be appointed to the board of administration, except by indult of the Apostolic See.

The local Ordinary shall not omit to consult the board of administrators in the more important administrative affairs; the vote of the members of the board is only consultive, unless the common law in certain explicitly stated cases or the charter of a foundation rules that the consent of the board is required. The members of the board shall take an oath before the Ordinary for the good and faithful performance of their office (**Canon 1520**).

1514. Besides this diocesan board of administrators, the local Ordinary shall appoint prudent and qualified men of good reputation for the administration of goods belonging to any church or pious institution for which no administrator is provided either by law or by the charter of foundation. They should be changed after three years, unless local circumstances make a more or less frequent change advisable. If laymen participate in the administration of ecclesiastical goods, either by legitimate title of the foundation or erection or by the will

of the local Ordinary, the administration must be entirely transacted in the name of the Church, and the Ordinary has the right of visitation, of demanding an account, and of prescribing the manner of administration (**Canon 1521**).

In the United States the pastors of parishes are often assisted in the administration by two lay trustees. The manner of appointing them and their term of office is by the Third Council of Baltimore left to the statutes of each diocese to determine. The same Council points out the necessary qualifications of the men who may be appointed as trustees.[20] Diocesan charitable institutions usually have a larger board of directors, nor are the parishes limited to two trustees, for the Baltimore Council does not limit their number. All these matters are to be regulated by the local Ordinaries, as the Code merely insists that each church or ecclesiastical institute shall have an administrator or a board of administrators.

Duties of the Board of Administration

1515. Before the administrators mentioned in the preceding Canon enter upon their duties:

(1) they must take an oath before the local Ordinary or the vicar-forane (dean of the respective district) that they will faithfully attend to the administration;

(2) they must make an accurate and specific inventory—to be signed by all the administrators—of immovable and precious movable goods and all other property, with their description and valuation; if they use an old inventory, those goods that were lost and those that were acquired in the interim must be marked down;

(3) one copy of this inventory is to be deposited in the archives of the administration, and another copy in the archives of the diocesan Curia. In each copy shall be noted any change which the goods of the church or institution may undergo (**Canon 1522**).

1516. As the administrators are bound to fulfill their office with the solicitude of a good father of a family, they shall:

(1) guard against any loss of or damage to the ecclesiastical goods confided to their care;

(2) observe the rules of both the Canon and civil law, and

[20] *Acta et Decreta Conc. Balt. III*, n. 287.

the special regulations imposed by the founder or donor or the legitimate authority;

(3) collect the revenues and income of the goods diligently and at the proper time, keep them in a safe place, and spend them according to the intention of the founder or the existing laws and regulations;

(4) invest the surplus revenue of a church, with the consent of the Ordinary, to the benefit of the church;

(5) keep the records of receipts and expenditures in good order;

(6) arrange and keep the documents and papers on which the property rights of the church are based in the archives or in a suitable or proper safe; authentic copies of these papers should, wherever it can be conveniently done, be kept also in the archives or safe of the diocesan Curia (**Canon 1523**).

1517. All who employ workingmen must pay them just and decent wages, which rule applies especially to clerics, religious and administrators of ecclesiastical goods. They must see that the workingmen are free to perform their religious duties at a convenient hour; they shall make no arrangement that will interfere with the workers' duties to their families and practice of thrift, and shall not impose on them work which is heavier than their strength can bear, or which is not suited to their age or sex (**Canon 1524**).

The sociologists deal with the points mentioned in Canon 1524.[21] The history of Christianity bears witness to the fact that the Catholic Church has used her power and influence for the betterment of the conditions of the poor, the sick and the afflicted. Many times she has raised her voice against men of wealth and power, if they oppressed the weak and the poor. In the present sociological conditions, the question of just and fair wages (or of a so-called living wage) is a very big and difficult problem, especially in a country as large as the United States. Pope Leo XIII has laid down in detail the general principles which should guide Christians in the relation between employer and employee.[22]

[21] John A. Ryan, "A Living Wage" (New York, 1906); "Distributive Justice" (New York, 1919); Ryan and Husslein, "The Church and Labor" (New York, 1920).

[22] Encyclical "Rerum Novarum," Mry 15, 1981 (*Acta S. Sedis*, XXIII, 641).

1518. All administrators, both clerics and laymen, are bound to make an annual report to the local Ordinary of their administration of all churches (including the cathedral church), pious places (religious or charitable institutes) canonically erected, and confraternities; contrary custom is disapproved. If, by special law, the financial statement has to be made to other specified persons, the local Ordinary or his delegate must also be admitted to inspect the report besides these persons; otherwise the administrators are not freed from their liability, though the aforesaid persons have discharged them (**Canon 1525**).

As stated before, the entire Title XXVIII does not consider the administration of goods and property held by religious organizations. Hence, the phrases "cujusvis ecclesiæ" and "cujusvis loci pii" (used in this Canon) may not be applied to places held by the religious; how far the supervisory right of the local Ordinary extends in the case of ecclesiastical property of the religious is stated in Canons 531–537.

Limitations of the Rights of Administrators

1519. The administrators shall not start a lawsuit in the name of the church nor enter a *contestatio* (a formal denial in court by defendant of the rights claimed by the plaintiff), unless they have first obtained the consent of the local Ordinary in writing, or in urgent cases at least the consent of the vicar-forane (dean), who shall at once inform the Ordinary of the permission granted (**Canon 1526**).

1520. The administrators act invalidly in actions which exceed the limits of the ordinary administration, unless they first obtain the faculty in writing from the local Ordinary. The Church is not liable for contracts made by administrators without the permission of the competent superior, except when and in so far as the contracts have turned to its advantage (**Canon 1527**). The Church does not recognize the illegal contracts of administrators, and therefore refuses to allow the particular church or ecclesiastical institution to incur loss as the result of such illegal action. In the United States the churches and institutions are as a rule incorporated under the provisions of the civil law, and the rules of the Canon Law and the particular regulations of the bishop may be embodied in the by-

laws of the corporation, so that before the civil law also the unauthorized contracts of the administrators are null and void.

1521. Even those administrators who are not bound to act as such in virtue of a benefice or ecclesiastical office, but who have explicitly or tacitly accepted the office, and then abandon it of their own accord in such a way as to cause loss to the Church, are bound to make restitution (**Canon 1528**).

TITLE XXIX

OF CONTRACTS

1522. Whatever the civil law of a country decrees on contracts and payments of all kinds is to be observed also by Canon Law in ecclesiastical matters, and has the same effects, except in so far as the civil law is contrary to the divine law, or Canon Law rules otherwise (**Canon 1529**).

This Canon simplifies matters by adopting the civil law of the different countries for contracts concerning ecclesiastical goods and the rights connected with the same. That the civil law may not be followed, if perchance it contravenes the divine law, is obvious. As the Church has the right of free and independent administration of her own affairs, she has the right to rule as she sees fit in the matter of contracts about ecclesiastical goods. Therefore, she says the civil law is to be followed except in those points in which the Church has made her own special regulations.

Alienation of Ecclesiastical Goods

1523. Without prejudice to the special law of Canon 1281 governing the transfer of important relics and precious images, the following rules shall govern the alienation of ecclesiastical goods, both immovable and movable, if the latter are of such nature that they can be preserved: (1) an appraisal in writing is to be made by conscientious experts; (2) there must be a just cause for disposing of the goods, which cause may be urgent necessity, or evident utility to the Church, or piety; (3) the permission of the legitimate superior must be obtained, and without

this the alienation is invalid. Other opportune precautions, which the ecclesiastical superior should demand according to the circumstances of the case, must not be omitted so that all loss to the Church may be avoided (**Canon 1530**).

The Code uses the term "alienation," not only in the sense of sale, but also for any other contract by which a third party acquires any right in the real or personal property belonging to a legal ecclesiastical person. The formalities mentioned in Canon 1530 are not required when there is question of goods which cannot be kept without danger of spoiling (e.g., fruits and vegetables, eggs, and the like). In the United States there is not much occasion for the application of the rule concerning perishable goods. The permission of the legitimate superior for the alienation of ecclesiastical goods is essential to the validity of the contract. Canon 1532 points out who the legitimate superior is (namely, either the Holy See or the local Ordinary); the same Canon specifies what contracts need the permission of the Holy See, and what contracts may be authorized by the local Ordinary.

1524. The goods must not be disposed of for a lesser price than was stated in the appraisal of the experts. The sale is to be made by public auction, or must at least be announced publicly, unless circumstances make a different course advisable; the goods shall be sold to the one who, all things considered, offers the better price. The money obtained from the sale of the goods shall be carefully placed in safe and productive investments (**Canon 1531**).

Permission for Alienation

1525. The legitimate superior, who, according to Canon 1530, n. 3, gives permission for the alienation of ecclesiastical goods, is the Holy See in the case: (1) of precious goods; (2) of goods which exceed in value the sum of thirty thousand lire or francs (**Canon 1532**, § 1).[22a]

The local Ordinary may give permission in the case of goods which do not exceed in value one thousand lire or francs, after he has heard the board of administration (unless the matter is of very little importance), and has obtained the consent of the interested parties. In the case of goods valued at between one

[22a] Concerning precious goods, cfr. App. III, 66, a and b.

thousand and thirty thousand lire or francs, the local Ordinary may give permission provided he has obtained the consent of the Cathedral Chapter (diocesan consultors), of the board of administration, and of the interested parties. In the case of the alienation of divisible goods, the request for permission or consent must state what portions were already alienated; otherwise the permission is invalid (**Canon 1532,** §§ 2–4).

In normal exchange thirty thousand lire or francs make about six thousand dollars (cfr. above, Volume I, n. 414). Before selling any ecclesiastical goods, an appraisal of their value is, as Canon 1530 prescribes, to be made by experts. If the estimated value does not exceed thirty thousand lire or francs ($6000), but at the sale a higher price is offered, the permission of the Holy See is not required, as was declared by the President of the Committee for the Authentic Interpretation of the Code.[23] As we shall see below, the rules of Canon 1532 apply, not only to the sale of ecclesiastical goods, but also to the contracting of debts or to burdening the ecclesiastical property in any manner.

1526. The formalities demanded by Canons 1530–1532 are required not only in an alienation properly so-called, but also for any contract which may have a prejudicial effect on the status of the church (**Canon 1533**).

The impairing of the financial status of the church without the prescribed formalities is forbidden. The contract itself may be advantageous to the church (e.g., the leasing of property to others for payment to be made to the church), but the church property as such is for the time being less valuable. The spending of money for the purpose of buying goods and property for the church is not spoken of in the Canons on the alienation of church property. Such expenditure is made either in the course of the ordinary administration (which spending of money for the acquisition of things ordinarily needed is part of the office of the administrator), or for new enterprises (e.g., new buildings), or finally in the purchase of land or valuable securities. Now, for the protection of the interests of the church or ecclesiastical institute, Canon 1527 rules that all acts of the administrators which exceed the bounds of the ordinary administration are invalid, unless they are done with the previous written permission of the local Ordinary.

[23] Cfr. App. III, 66, c. Ordinary cannot validate illegal alienation, cfr. App. III, 66, d. For latest decision see App. III, g.

Defence of the Church Against Unlawful Alienation

1527. The Church has the right of *personal action* against any individual who, without the necessary formalities, alienated ecclesiastical goods, and against his heirs; the right of *real action*, if the alienation was invalid, against any possessor of the goods illegally disposed of, leaving to the buyer the right to sue the person who illegally sold the goods. The invalid alienation of ecclesiastical goods may be contested by the person who alienated them, by his superior, by the successors of either in office, and by any cleric assigned to the church which sustained a loss (**Canon 1534**).

The disposal of the ecclesiastical goods is invalid if any formality was neglected which is prescribed under pain of invalidity (e.g., the consent of the legitimate superior); if a formality was omitted which is demanded for licitness only, the alienation is valid. If the alienation is valid but illicit, the church or ecclesiastical institute whose goods were thus disposed of has the right to sue the person who acted illicitly, and make him pay for the damage; Canon Law gives the right to sue also his heirs. In the case of invalid alienation, there is the right to sue either the person who illegally disposed of the church property, or the possessor of the property. Since the disposal of it was invalid, the possessor did not acquire title to the property, and the church or ecclesiastical institute can reclaim those goods wherever they are found. In the matter of ecclesiastical property the Church is, as we saw above, independent of the civil power, and her rules oblige the subjects of the Church to obey those laws, even though some of the provisions of Canon 1534 cannot perhaps be enforced in the civil courts. In the United States where the churches and ecclesiastical institutions are usually incorporated under the laws of the respective states in which they are located, the Canon Law rules may be embodied in the by-laws of the individual corporations in such a way that the rights of the Church over the goods and property are well protected.

Donations by or to the Church

1528. Prelates and rectors shall not presume to make donations from the movable goods of their churches, except in small and moderate amounts as sanctioned by the legitimate custom of

the place, unless there is a just cause of remuneration, or piety, or Christian charity; otherwise, the donations can be reclaimed by their successors (**Canon 1535**).

1529. Unless the contrary is proved, it is to be presumed that donations given to rectors of churches (even the churches of religious communities) are given to the church.[24] A donation made to a church cannot be refused by the rector or superior without permission of the Ordinary. The illegitimate refusal of a donation to a church constitutes the legal basis for a suit for *restitutio in integrum* or indemnity for any losses that may result from such refusal. A donation made to and legitimately accepted by a church cannot be recalled by the benefactor because of the ingratitude of the prelate or rector (**Canon 1536**).

The law supposes that the intention of the donor in offering a donation to the rector of a church is to benefit the church, not the rector personally—or his community, if pastor or rector belongs to a religious community. Unless, therefore, the donor manifests his intention of making a personal gift, or such intention is morally certain from the circumstances, the law forbids it to be considered a personal donation. The Third Council of Baltimore had stated a presumption similar to that of the Code in the case of donations of vestments and sacred utensils generally, which were to be considered given to the church, unless the contrary intention had been explicitly declared by the donors.[24a] The presumption of the Code goes further, as it extends to donations of all kinds.

1530. The Church demands that the priest in charge of a church or other ecclesiastical institute work for its advancement. Wherefore, she forbids him to refuse donations offered for the benefit of the church or institution. The permission of the Ordinary of the diocese is required to refuse such an offering—or, in the case of exempt clerical organizations of religious, the permission of the major superior, if the donation is offered in favor of the religious. If one has without permission refused a donation, Canon Law gives the church or institution the right either to get reinstated in its former condition (*restitutio in integrum,* i.e., before the offer was refused), or to sue the one who illegitimately refused the gift to indemnify the church or institution. The first

[24] This rule applies to donations received before the Code, cfr. App. III, 66, e.

[24a] *Acta et Decreta C. Balt. III,* n. 276.

manner of regaining the lost donation will in many cases be impossible, because the benefactor may have changed his mind, and feels offended at the refusal. The second manner of indemnifying the church or institution is given as a punishment of the priest's or prelate's disregard of the explicit regulation of this Canon, forbidding the refusal of a donation for the church or institution without the permission of the Ordinary. It cannot be said that the refusal of the donation for the benefit of another is contrary to justice, if no deceit, lies, or other unjust means are employed to dissuade the benefactor from making the donation. The Code, however, makes the prelate or rector liable for the loss, if the ecclesiastical court decides against him. In the civil courts of the United States, and very likely in any other country, no right of action is given in the case.

Loans, Pledges, Mortgages, Debts

1531. Sacred objects shall not be loaned for purposes repugnant to their nature (**Canon 1537**). If the goods of a church are for a legitimate reason to be pledged or mortgaged, or debts are to be contracted, the legitimate superior who has according to Canon 1532 the right to grant permission shall insist that previously all parties interested are heard, and he shall see that the debts are paid off as soon as possible. The same Ordinary shall for this purpose determine the annual rate at which the debt is to be extinguished (**Canon 1538**).

The lending of sacred objects for the use of another is not forbidden, provided the sacred objects are not loaned for purposes unbecoming to the dignity of sacred objects. Generally speaking, the administrators of these sacred things do not need permission of the Ordinary to lend them, but, if the objects are of great value and their loan extends over a considerable length of time, the principle of Canon 1533 applies—i.e., the formalities of Canons 1530–1532 must be observed in any contract or agreement by which the status of the church is impaired.

The contracting of debts and the mortgaging or pledging of ecclesiastical goods and property (e.g., giving bonds in security for a loan made to a church) are subject to the rules of Canon 1532. The amount of the debt or the value of the mortgage or security given determines whether the Ordinary can give the

permission, or whether the permission of the Holy See is demanded.

Sale and Exchange

1532. In the sale or exchange of sacred objects the fact of their consecration or blessing must receive no consideration in appraising their value. Administrators may exchange notes payable to bearer for other valuable papers which are at least equally safe and profitable, but must avoid any kind of barter or trading; such transactions also require the consent of the Ordinary, the diocesan board of administration and other interested parties (**Canon 1539**).

The sale of objects which have been blessed or consecrated is permitted, unless the law in some case forbids it because of the danger of irreverence to the sacred object (cfr. Canon 727). These things retain the material value which they possessed before they were consecrated or blessed, and may be sold for that valuation. If the price were raised because of the blessing or consecration which had been imparted to these objects, it would mean that the spiritual thing is made the object of barter for something temporal, which is forbidden by the divine law. Though a church may sell consecrated chalices, or blessed vestments, or a blessed chapel, the rule that sacred objects may not be loaned for purposes unbecoming to the nature of things sacred (cfr. Canon 1537) applies also in the sale of blessed or consecrated objects. The law of the Decretals forbids the sale of churches even between two ecclesiastical persons.[25] In commenting on Canon 1539, Ferreres concludes that it is lawful to sell rosaries, medals and other religious objects which have been blessed, though they lose the indulgences through the sale, by the explicit rule to that effect in Canon 924.[26] That opinion seems to be a legitimate conclusion from the two Canons in question, 1539 and 924, for no prohibition to sell is contained in Canon 924.

1533. As to the exchange of commercial papers possessed by a church or other ecclesiastical person, it is necessary to keep in mind that an exchange only—not a sale—is permitted with the consent of the Ordinary, the diocesan board of administration, and the interested parties. The sale of such papers comes under

[25] *Decretales Greg. IX*, c. 15, *De Simonia, etc.*, lib. V, tit. 3.
[26] *Institutiones Canonicæ*, II, n. 507.

the general laws for the alienation of ecclesiastical property. Of course, a sale of these securities may be implied, for it may not be possible to get other securities from the same person to whom the securities of the church are sold. The intention of the law seems to be to allow the administrators some liberty in disposing of one kind of securities with the view of buying other more favorable securities. Wherefore, the permission of the Holy See is not required for such a transaction, even though the value of the securities amounts to more than thirty thousand francs. By declaration of the Sacred Congregation of the Council, February 17, 1906, the permission of the Holy See was required for the exchange of securities in the same manner as for the sale of immovable and of precious movable goods.[27] The Code modifies this declaration.

Sale and Lease of Real Estate

1534. Without the special permission of the local Ordinary the immovable goods of a church shall not be sold or leased to the administrators of the same church, or to persons related to them in the first or second degree of consanguinity or affinity (**Canon 1540**).

Land belonging to a church should not be leased except by public auction or other public announcement, unless special circumstances make a different course advisable; and conditions are to be added to the contract concerning the guarding of the boundaries, the proper cultivation of the soil, and the payment of the rent, all of which should be secured by proper guarantees (**Canon 1541**, § 1).

In the leasing of ecclesiastical goods Canon 1479 must be observed (which forbids the holder of a benefice to receive payment of the rent for over six months in advance from leased property of the benefice) and in addition the following regulations: (1) *if the value of the lease exceeds thirty thousand lire or francs* and lasts over nine years, the permission of the Holy See is required for the renting of the property; if the lease does not exceed nine years, the rule of Canon 1532, § 3, is to be followed (the local Ordinary can give permission); (2) *if the value is between one thousand and thirty thousand francs* and the lease

[27] *Acta S. Sedis*, XXXIX, 159.

is for more than nine years, Canon 1532, § 3, applies (local Ordinary can give permission with the consent of the board of administrators and interested parties) ; if the lease does not exceed nine years, Canon 1532, § 2, applies (the local Ordinary gives permission with the advice of the board of administrators and the consent of the interested parties) ; (3) *if the value does not exceed one thousand francs* and the lease extends over nine years, Canon 1532, § 2, applies; if the lease does not extend over nine years, it may be done by the legitimate administrators, informing the Ordinary of the fact (**Canon 1541**, §§ 2–3).

There are very few churches or ecclesiastical institutions in the United States which have land or houses to lease. The value of the lease which determines the formalities required by the Code, is based on the *annual* rent to be paid, not the aggregate payments during the life of a lease. In the law before the Code, the leasing of real estate for more than three years required the permission of the Holy See.[28]

1535. In the peculiar form of a lease of ecclesiastical goods which is called *emphyteusis,* the lessee cannot be relieved from the obligation of paying the stipulated consideration [here called the *canon*] without the permission of the legitimate ecclesiastical superior spoken of in Canon 1532; if he is permitted to free himself, he must pay at least that sum of money to the church which corresponds to the consideration. Appropriate security must be demanded from the lessee for the payment of the consideration (*canon*), and for the fulfillment of the condition of the lease. In the instrument itself by which the contract of *emphyteusis* is drawn up, the ecclesiastical forum is to be declared the arbitrator for the settling of all controversies which may possibly arise between the parties, and it shall be expressly declared in the instrument that the improvements belong to the soil—and not to the lessee (**Canon 1542**).

The contract of *emphyteusis,* which is not known in the United States but exists in other countries, is, according to Ferraris, a contract by which real estate is leased to a third party (called the *emphyteuta*) so that he enjoys the right to use the property and becomes the owner of its produce, either for all time or for a definite period, not less than ten years, under condition

[28] Ojetti, "Synopsis Rerum Moral. et Juris Pont.," I, s. v. *Alienatio.*

that he pays annually a certain consideration.[29] This consideration which is to be paid annually may be either in kind (i.e., of the produce of the land) or in money, and is called the "canon." The landlord retains the mere ownership or title; the *emphyteuta* has the *dominium utile*, the right to use and enjoy the land.

Interest on Loans

1536. If a *fungible* thing is given to another in such a manner that it becomes his own, and is to be later on returned in kind only, no gain may be made by reason of the contract itself. However, in lending a fungible thing, it is not *per se* illicit to make an agreement about the legal interest (unless it is certain that it is excessive), nor is it illicit to make an agreement for more than the legal interest, if a just and proportionate title justifies such an agreement (**Canon 1543**).

Fungible goods are described by Webster as "a thing of a class or kind such that one individual or part may be used in place of any other individual or equal part in satisfaction of an obligation." These things are usually estimated in number, weight, or measure, and are of a nature that they are consumed by the first user. The *mutuum* is a "loan of fungible things to be restored in kind and of the same quantity and quality."[30] The question of the contract called *mutuum* has been the subject of much controversy. The position of the Church is that, if we lend something to another and demand of him in return more than was lent him, we take an undue advantage of the other. As late as May 9, 1821, the Holy Office declared that the making of profit from a loan as a loan (*ex mutuo vi muti*) is unlawful.[31] In his Encyclical "Vix pervenit," Pope Benedict XIV states that he had the whole question of the "mutuum" submitted to a committee composed of many learned men, and that they all agreed that it was wrong to charge any interest for a loan as such, but that there could be together with the "mutuum" other titles or reasons why interest may be taken.[32] In 1873 the Sacred Congregation of the Propaganda declared that, in lending money at interest, the provision of the civil law allowing a certain

[29] "Bibliotheca," II, s. v. *Contractus emphyteusis*, art. 1.
[30] *New International Dictionary* (Springfield, Mass., 1924).
[31] *Collectanea de P. F.*, I, n. 759.
[32] Gasparri, "Fontes Cod. Jur. Can.," I, 939.

amount of interest may be taken as a sufficient reason to justify this practice (even though there are no other reasons, such as loss of profit to the lender, risks taken by him, etc.), until the Holy See should definitely decide the question.[33]

The Code practically closes the controversy by stating that in the loan of a fungible thing it is not *per se* illicit to make an agreement about the legal interest. It goes still further by declaring that even more than the legal interest can be stipulated, if there are special reasons to justify the higher interest. In the United States most states have statutes against usury—that is, "taking or reserving by contract a greater compensation or rate of interest for the loan of money than the highest rate of interest allowed by law." [34] In those states or countries which allow the taking of a high rate of interest that is altogether against natural equity, the law cannot be followed in conscience, as the Code states. The definition of what is an excessive rate of interest, depends largely on local conditions. There is no doubt that money under the present conditions of life is by no means a dead and unproductive thing. No civilized nation of the world could to-day exist and prosper without the system of loans and interest.

TITLE XXX

OF PIOUS FOUNDATIONS

1537. By the term "pious foundations" are meant temporal goods given to some legal ecclesiastical person in any manner with the obligation to say certain Masses, or hold other specified ecclesiastical functions, or perform some works of piety or charity perpetually or for an extended period in return for the revenue of the goods. The foundation when legitimately accepted has the nature of a bilateral contract—"*do ut facias*"—binding on both parties (**Canon 1544**).[34a]

1538. It is the right of the local Ordinary to prescribe the regulations regarding the limits below which a pious foundation cannot be accepted and the proper distribution of the income from the endowment (**Canon 1545**). The written consent of the

[33] *Collectanea de Prop. Fide*, II, n. 1393.
[34] Clark and Marshall, "The Law of Crimes" (2nd ed.), 723.
[34a] What foundations may be changed, cfr. App. III, 67, a.

local Ordinary is required for the acceptance of such a foundation by a legal ecclesiastical person; the Ordinary shall not give his consent until he has ascertained that the legal person can satisfy the obligation of the new foundation as well as of those already undertaken. He shall especially see that the income from the foundation corresponds fully to the imposed obligations, according to the custom of the respective diocese. The patron of a church has no right to interfere in the accepting, constituting and administration of the foundation (**Canon 1546**).

1539. Money and movable goods given for the endowment of a foundation shall be deposited immediately in a safe place to be designated by the local Ordinary, and kept there until they can be safely and profitably invested. The investment is to be made according to the good judgment of the Ordinary, after he has consulted both the interested parties and the diocesan board of administration, and shall be made in favor of the foundation, the Ordinary enumerating explicitly and individually the obligations attached to the foundation (**Canon 1547**).

1540. Foundations, though made orally, shall be put in writing. One copy of the agreement (called the *tabulæ fundationis*) shall be kept in the diocesan archives, and another in the archives of the legal person which the foundation concerns (**Canon 1548**). Besides observing the regulations of Canons 1514–1517 and 1525, every church which has a foundation shall prepare a list of the obligations imposed, and this list shall be kept by the rector in a safe place. Besides the book mentioned in Canon 843 (for manual stipends), another book must be kept in which the rector shall enter each and all perpetual and temporary obligations, their fulfillment and the stipends paid, so that an exact account of all these details may be given to the local Ordinary (**Canon 1549**).

1541. In the case of pious foundations in the churches of exempt religious (even parochial churches), the rights and duties of the local Ordinary, as defined in Canons 1545–1549, pertain exclusively to the major religious superior (**Canon 1550**).

1542. The reduction of obligations attached to pious foundations is reserved exclusively to the Holy See, unless the document of foundation explicitly states otherwise (i.e., gives the Ordinary certain specified powers to reduce the obligations); the Masses, however, can never be reduced without permission of the Holy

See (cfr. Canon 1517). The indult to reduce foundation Masses does not extend to other Masses due by contract or to the other works of the pious foundation. A general indult to reduce the obligations of pious foundations must be understood in the sense that the person possessing the indult shall, unless the contrary is apparent, reduce other obligations rather than the Masses (**Canon 1551**).

Pious foundations are not very common in the United States. If a man sets aside a certain amount of money or other personal or real property to be given to a church or an ecclesiastical institution with the agreement that the ecclesiastical person shall have a certain number of Masses said or other divine services held annually (the income from the fund or other property serving as a stipend for such services), and if that agreement is to last for all time or for forty or more years, a pious foundation is thereby constituted. Such an offer cannot be accepted by a pastor, rector, religious superior, or other heads of churches and ecclesiastical institutions without the consent of the Ordinary of the diocese—or of the major superior of the religious organization, if the foundation is offered to a church or house of exempt religious. The stipulations made in the document by which the foundation is established are called in Canon Law *tabulæ* (or *leges*) *fundationis.*

1543. The income from the endowment of the foundation may decrease in the course of time through no fault of the church which acts as administrator, and the obligations may thus become entirely disproportionate to the stipends. In such a case Canon 1851 permits the application of Canon 1517, which gives the Ordinary power to reduce the obligations attached to pious bequests, if in the course of time the stipend appointed for the divine services has greatly depreciated. Ordinaries have no power to reduce the number of Masses, unless the document which establishes the foundation expressly states so.[35] If the fund or property is entirely lost through no fault of the ecclesiastical person who held its administration, canonists of the old Canon Law held that the obligations attached to the foundation ceased.[36] That the obligations (even foundation Masses) were suspended for the time that the endowment did

[35] Cfr. App. III, 67, b.
[36] Gasparri, "De SS. Eucharistia," I, n. 588.

not produce any interest or revenue, had been already declared by the Sacred Congregation of the Council.[37]

Some commentators on the Code (e.g., Vermeersch-Creusen and Cocchi) [38] hold that, if the fund or property of the foundation perishes through no fault of its holder, the obligations of the foundation cease. They thus follow the old canonists. It seems, however, that the Code does not allow the cessation of the obligations of Masses attached to a foundation. The only kind of a reduction of the obligations of foundations which the Code permits (in Canon 1551) is the reduction mentioned in Canon 1517: if the fund or property is partially lost or the interest from the fund decreases for any other reason (without the fault of the administrators), obligations may be reduced by the Ordinary *with the exception of the obligation of Masses.* It seems, therefore, that one must apply to the Holy See in such cases to get a reduction of the foundation Masses.

1544. The faculties which the Bishops in the United States receive from the Sacred Congregation of the Council, give them the power to reduce the number of perpetual foundation Masses because of diminished revenues to the extent that the celebrant of the Masses may get that stipend which is the usual legitimate stipend in the diocese. The bishop may make use of this faculty only in cases where there is nobody who is bound and can be forced by law to supply the deficiency of the revenue of the foundation. The priests who say these Masses must inform the diocesan Curia each year of the fulfillment of the obligation. The Bishops have received the further faculty from the same Sacred Congregation to transfer within the diocese the foundation Masses to days, churches and altars other than those specified in the document by which the foundation was established. The general rule is, as we saw, that the Holy See only is competent to change the stipulations of a foundation.

[37] Benedictus XIV, "De Synodo Diœcesana," lib. XIII, cap. ult., nn. 34–35.

[38] *Epitome,* II, n. 836; *Commentarium,* VI, n. 232.

The Fourth Book
of Canonical Trials

PART ONE

OF ORDINARY TRIALS

1545. The fourth book of the Code is divided into three parts: the first outlines the procedure at ordinary trials in the ecclesiastical court; the second treats of the procedure in beatifications and canonizations; the third deals with the formalities to be observed in the removal and transfer of pastors, in proceedings against clerics breaking the law of residence, clerics living in concubinage, pastors who neglect their pastoral duties and of the suspension *ex informata conscientia.*

Civil and Criminal Trials

1546. By the term "ecclesiastical trial" is meant the legal discussion and settlement before an ecclesiastical tribunal of a controversy in an affair over which the Church has the right to judge. The subject matter of canonical trials are:

(1) the prosecution or vindication of the rights of physical or moral persons, or the declaration of the juridical facts concerning such persons (e.g., the validity of ordination, of marriage, etc.). These are called *civil* trials;

(2) offenses with a view to inflicting or declaring a penalty. These are called *criminal trials* (**Canon 1552**).

For "civil trials," the Code uses the term *judicium contentiosum* (a trial at which rights are contested).

Cases Subject to Ecclesiastical Trial

1547. The Church has the inherent and exclusive right to judge:

(1) cases which relate to spiritual matters, or to temporal matters annexed to spiritual;

(2) violations of ecclesiastical laws, and all other actions in which sin is implicated, in so far as the decision on the guilt and the infliction of ecclesiastical penalties are concerned; [1]

(3) all civil and criminal cases of persons who enjoy the privilege of the ecclesiastical forum, as defined by Canons 120, 614, and 680.

In those cases in which the civil courts have concurrent jurisdiction with the ecclesiastical courts—the so-called cases of the *mixed forum*—prevention holds good, that is, whichever court first accepts the complaint or prosecutes the offender, has the right to judge the case (**Canon 1553**).[1a] The plaintiff who takes a case of the mixed forum to the secular court after it had been brought before an ecclesiastical judge, may be punished in the manner specified in Canon 2222, and he forfeits the right to bring action in the ecclesiastical forum against the same person in the same case or in another matter connected with that case (**Canon 1554**).

Courts which Are Bound to Follow the Procedural Law of the Code

1548. The tribunal of the Congregation of the Holy Office proceeds according to its own laws and customs, and also the inferior tribunals must follow the norms given by the Holy Office in matters pertaining to the tribunal of that Sacred Congregation. Other tribunals must observe the laws prescribed in the succeeding Canons.[2] In the trial for the dismissal of religious the precepts of Canons 654–668 are to be observed (**Canon 1555**).

[1] Cfr. the words of Pope Innocent III in the Decretals: "No sane person is ignorant of the fact that it pertains to our office to punish every Christian for any mortal sin" (*Decretales Greg. IX*, c. 13, *De Judiciis*, lib. II, tit. 1).

[1a] Right to pew in church is not a matter of mixed forum, cfr. App. III, 68, a.

[2] *Ordo Servandus in Romana Curia, Normæ peculiares*, cap. VII (*Acta Ap. Sedis*, I, 78–81).

Section I

OF TRIALS IN GENERAL

TITLE I

OF THE COMPETENT FORUM

1549. The Primatial See can be judged by no one (**Canon 1556**). The Supreme Pontiff has the highest legislative, administrative and judicial power in the Church. The Code states that the Roman Pontiff cannot be brought to trial by anyone. The very idea of the trial of a person supposes that the court conducting the trial has jurisdiction over the person, but the Pope has no superior, wherefore no court has power to subject him to judicial trial.

Cases Reserved to the Holy See

1550. The Roman Pontiff has the exclusive right to judge the cases of the following persons:

(1) those who hold the highest governmental rank in a nation, their sons and daughters, and those who have the immediate right of succession;

(2) Cardinals;

(3) Legates of the Apostolic See, and in criminal cases Bishops, even titular ones (**Canon 1557,** § 1).

To the Tribunals of the Apostolic See is reserved the judgment over:

(1) residential bishops in civil cases, with the exception of the cases mentioned in Canon 1572;

(2) dioceses and other legal ecclesiastical persons who have no superior below the Supreme Pontiff (e.g., exempt religious organizations, Monastic Congregations, etc.).

Other cases which the Roman Pontiff has cited to his tribunal shall be judged by the judge whom the Roman Pontiff himself shall have appointed (**Canon 1557,** § 2).

The cases spoken of in Canons 1556–1557 are reserved in

such a manner that the incompetency of all other judges is *absolute* (**Canon 1558**).

1551. Nobody can be sued in the first instance, except before an ecclesiastical judge who is competent by reason of one of the titles specified in Canons 1560–1568. The incompetency of a judge who has none of these titles is called *relative*. The plaintiff follows the forum of the defendant; if the defendant has various courts that are competent in the case, the plaintiff has the right to choose between the courts (**Canon 1559**).

Necessary Forum

1552. The following cases or actions have a necessary forum:

(1) actions *de spolio* (that is, to regain possession or quasi-possession of property or property rights of which one was wrongfully deprived either by force or secretly, cfr. Canon 1698) must be brought before the local Ordinary where the property is located;

(2) cases concerning a benefice, though not a residential one, must be tried before the local Ordinary where the benefice exists;

(3) cases concerning administration must be tried before the local Ordinary in whose territory the administration was conducted;

(4) cases concerning hereditaments or legacies for pious causes must be tried before the local Ordinary of the domicile of the testator, except when there is question merely of the execution of a legacy, which is to be settled according to the ordinary rules of competency (**Canon 1560**).

Ordinary Forum

1553. Every person can be sued before the local Ordinary of the territory in which he has a domicile or quasi-domicile. The Ordinary of the domicile or quasi-domicile has jurisdiction over his subject, even though the latter is absent from the diocese (**Canon 1561**). By domicile or quasi-domicile one becomes subject to the local Ordinary (cfr. Canon 94), and consequently, though a subject be actually absent from the diocese, he can be cited before this Ordinary's tribunal in all cases except those reserved to the Holy See or those which

have a necessary forum. There are special regulations for determining the competent forum in marriage cases (cfr. Canons 1960–1965) and for the rest of the procedure in those cases (cfr. Canons 1966–1992).

1554. A stranger in the city of Rome, though staying there only for a short time, can be summoned in that city just as in his own domicile; he has, however, the right to have his case tried in the place of his home (i.e., he may request that the case be referred to his proper Ordinary). If a person has stayed in the city of Rome for a year, he has the right to decline the forum of his Ordinary, and to insist that he be summoned before the tribunals of Rome (**Canon 1562**).

1555. A *vagus* (i.e., a person who has nowhere a domicile or quasi-domicile) has his proper forum in the place where he actually stays. A *religious* has his proper forum in the place where the religious house to which he belongs is located (**Canon 1563**).

1556. In virtue of the location of the thing about which there is controversy, a party can be summoned to appear before the local Ordinary of the place where the thing is located, whenever the suit is brought directly against the thing itself (**Canon 1564**). This would occur in a replevin suit or a suit to quiet title. If it is an action *de spolio,* Canon 1560 makes the place of the location of the property the necessary forum. If the defendant in a suit *in rem* does not answer the summons of the Ordinary of the place where the thing is located, he cannot be forced by ecclesiastical penalties to appear, if he resides in another diocese, but the trial proceeds and the judge can, if he believes that the plaintiff proved his case, award him possession or ownership (as the case may be) of the thing in controversy, and he can enforce his sentence against the defendant if he interferes with the execution of the sentence.

1557. By reason of a contract, a party can be sued before the local Ordinary of the place where the contract was made or must be executed. At the time when the contract is made the contracting parties are allowed to choose a place in which they can be summoned and sued, even though they be absent from the place, if questions arise as to the interpretation of the obligation, or as to the urging or fulfillment of the obligation (**Canon 1565**).

As the contract may be made in one place, and may have to be executed in another place, two Ordinaries of different dioceses might be competent in a suit on the contract. A stranger can be sued on the contract only if he is actually in the place of contract when the summons is served on him.[3] If the contracting parties stipulate the diocese in which suit on the contract is to be brought, they are free to choose any diocese, and the parties are bound to answer the summons of that court, though they are absent from the territory of that diocese. The court of the diocese where the defendant has a domicile or quasi-domicile, has concurrent jurisdiction in suits on the contract.

1558. Because of an offense, the accused party becomes subject to the forum of the place where the offense was committed. Though the accused party has left the place after committing the offense, the judge of that place has the right to summon him to court and to pronounce the sentence in his case (**Canon 1566**). The local Ordinary of domicile or quasi-domicile has concurrent jurisdiction.

1559. By reason of connection or content, all interrelated cases (e.g., a criminal action and an action for damage caused by the crime) are to be tried by the same judge, unless some rule of law stands in the way—e.g., if one case has a necessary forum (**Canon 1567**).

1560. By reason of prevention, when two or more judges are equally competent, that judge has the right to try the case who first issued the summons to the defendant and thus legitimately cited him to his tribunal (**Canon 1568**). If it is doubtful what court is entitled to try a case, the archbishop's court decides the question of competency, when both courts belong to the same ecclesiastical province; when they belong to different provinces, the metropolitan of the judge to whom the case was first brought shall decide; if the courts have no immediately superior court (e.g., some diocese which stands directly under the Holy See), the Papal Legate, if there is one, or otherwise the *Signatura Apostolica* decides the competency (cfr. Canon 1612).

[3] Lega, "De Judiciis Ecclesiasticis," I (2nd ed.), n. 341. Concerning absence from place of contract and suit against absentee, cfr. App. III, 68, b.

TITLE II

OF THE VARIOUS DEGREES AND SPECIES OF TRIBUNALS

1561. In view of the primacy of the Roman Pontiff, any member of the faithful in the whole world may appeal his case to the Holy See—whether the case be civil or criminal and at any stage whatsoever of the procedure (first instance or court of appeal, at the beginning of the trial or any other stage)—or may take it there in the first place. However, the recourse to the Holy See does not suspend, except in a case of appeal, the exercise of jurisdiction by the judge who has already begun the trial of the case. He may continue the case and pronounce final sentence, unless it is known that the Apostolic See has reserved the case to itself (**Canon 1569**). It is evident that the Supreme Pontiff has the right to judge any case of any subject of the Catholic Church in matters which are under the jurisdiction of the Church, because the Pope has supreme legislative, administrative and judicial power over the whole Church. However, since there are ordinary judges appointed by law, it is evidently not the intention of the Supreme Pontiff who made that law to interfere with the jurisdiction of the ordinary judges, unless there are special reasons which in the judgment of the Holy See make it advisable to try the case at the Supreme Pontiff's Tribunal.[4]

1562. With the exception of the cases reserved to the Apostolic See, or the cases which it has summoned to its own tribunal, all others are to be tried by the various tribunals spoken of in Canons 1572 sqq. Every tribunal has the right to call upon another tribunal for the examination or summons of the parties and the witnesses, the inspection of documents or of the thing in controversy, notification of court orders, and the like, and the tribunal called upon must observe the precepts of law for each of these acts (**Canon 1570**). The judge who tries the case in one stage of the trial cannot try the same case in another instance (**Canon 1571**).

As the same judge is absolutely incompetent to try the case

[4] Eichmann, "Prozessrecht des Cod. Jur. Can." (Paderborn, 1921), 49.

in the second instance, all appeals are addressed to the higher court. There is no appeal from the sentence of the *Officialis* or diocesan judge to the Ordinary, because the *Officialis* forms one and the same tribunal with the Ordinary. If one attacks the sentence of the court because of the invalidity of the sentence, the complaint is made to the judge who issued the sentence, and he can again try the case. However, if one fears that the judge's mind is prejudiced, one can ask that another judge be appointed to try the case in the same court. If the complaint of invalidity is combined with an appeal, the case goes to the higher court (cfr. Canons 1892–1897).

Chapter I

OF THE ORDINARY TRIBUNAL OF THE FIRST INSTANCE

ARTICLE I.—OF THE JUDGE

1563. In every diocese and for all cases not expressly excepted by law, the local Ordinary is the judge of the first instance, and can exercise the judiciary power either in person or through others, according to the following Canons. If the rights or the temporal goods of the bishop, or of the *mensa episcopalis,* or of the diocesan Curia are involved, the case should either be referred, with the consent of the bishop, to a tribunal of three judges of the diocese, consisting of the judge of the Curia and two of the older synodal judges, or carried to the immediately higher court (**Canon 1572**).

In cases in which the bishop is personally interested, he cannot be judge. If the bishop consents and the party bringing the suit is satisfied, a diocesan tribunal of the three judges specified in Canon 1572 may try the case; otherwise, the case goes to the next higher court, which, in the case of a suffragan bishop, is the archbishop's court; in the case of an archbishop, to that diocesan court which has been once for all chosen by the archbishop with the approval of the Holy See (cfr. Canon 1594).

The "Officialis" or Diocesan Judge

1564. Every bishop is bound to appoint an *Officialis,* or diocesan judge, with ordinary power to judge; he should be distinct from the vicar-general, unless the smallness of the diocese or the small amount of business makes it preferable to entrust this office to the vicar-general. The diocesan judge constitutes one tribunal with the bishop of the diocese, but he cannot try cases which the bishop reserves to himself. Assistants may be assigned to the diocesan judge with the title of *Vice-officiales.* Both the *Officialis* and the *Vice-officiales* must be priests of irreproachable reputation, must possess the degree of Doctor of Canon Law or a thorough knowledge of the same, and must be at least thirty years of age. They may be removed at will by the bishop. During the vacancy of the bishopric their office does not cease, nor can they be removed by the vicar-capitular (or the diocesan administrator). When the new bishop comes into office, their appointment must be confirmed. If the vicar-general is at the same time the *Officialis,* his office of vicar-general ceases with the vacancy of the bishopric, but the office of *Officialis* continues. If the *Officialis* is elected vicar-capitular (diocesan administrator), he appoints a new *Officialis* (**Canon 1573**).

Synodal Judges

1565. In every diocese priests of unblemished character and eminent knowledge in Canon Law shall be appointed as Synodal Judges, or Pro-Synodal judges, if appointed outside of a diocesan synod. These judges may be taken even from another diocese, and shall be not more than twelve in number; they shall take part in the adjudication of cases with power delegated by the bishop. Their appointment, substitution, loss of office, and removal, shall be governed by the rules of Canons 385–388 (see Volume I, n. 284). In law the pro-synodal judges are included under the name of synodal judges (**Canon 1574**).

Trials by a Single and by Several Joint Judges

1566. In every trial conducted by *one* judge he can employ two *assessores* or councillors, who must be taken from among the synodal judges (**Canon 1575**).[4a]

[4a] Laymen not to be appointed judges in ecclesiastical court, cfr. App. III, 69.

The following cases must be tried by several joint judges, every contrary custom being disapproved and all contrary privileges revoked:

(1) *civil* (*contentiosæ*) cases involving the validity of sacred ordination or marriage or regarding the temporal rights and goods of the cathedral church, and *criminal* cases involving the deprivation of an irremovable benefice or the infliction or declaration of excommunication, must be tried by a collegiate tribunal of three judges;

(2) trials in connection with crimes which entail the penalties of deposition, perpetual deprivation of the clerical garb, or degradation, are reserved to a tribunal of five judges.

1567. The local Ordinary can commit other cases also to a collegiate tribunal of three or five judges, and he should do so especially when there is question of cases which seem more difficult and of greater importance by reason of circumstances of time, place, persons, and subject matter of the trial. The two or four judges who, together with the presiding judge, constitute the collegiate tribunal, shall be chosen by the Ordinary from among the synodal judges in rotation, unless he thinks it best to deviate from this rule (e.g., by appointing for special reasons as judges in a case men who do not belong to the synodal judges, or by appointing the synodal judges not in rotation) (**Canon 1576**).

1568. The tribunal of associate judges must act as a body, and pronounce sentence according to the majority vote. The *Officialis* or the *Vice-Officialis* presides, and directs the procedure and decides what is necessary for the administration of justice in a given case (**Canon 1577**).

1569. With the exception of the cases enumerated in Canon 1572, the bishop may always preside over the tribunal in person. However, it is highly expedient that the bishop let the cases, especially criminal and more important civil cases, be judged by the ordinary tribunal under the presidency of the *Officialis* or *Vice-Officialis* (**Canon 1578**).

Competent Court for Religious

1570. If any controversy arises between religious of the same exempt clerical organization, the Provincial Superior—

and, in an autonomous monastery, the abbot—is the judge of the first instance, unless the Constitutions rule otherwise. In a controversy between two Provinces, the Superior General judges the case in the first instance either in person or through a delegate, unless the Constitutions prescribe otherwise; if the controversy is between two autonomous monasteries, the abbot president of the respective Monastic Congregation is the judge (**Canon 1579,** §§ 1–2).

1571. If a controversy arises (1) between physical or moral persons of different religious organizations, or (2) between religious of the same non-exempt organization or a laical community, or (3) between a religious and a secular cleric or lay person, the local Ordinary is the judge of the first instance (**Canon 1579,** § 3).

The local Ordinary of the house where the religious is stationed by his superior is the competent judge, if the religious is made defendant in a suit brought by a religious of another organization, by a secular cleric. or by a lay person; the privilege of exemption of the religious withdraws the case from the tribunal of the local Ordinary in cases only where there is a controversy between religious of the same exempt organization. Besides the residence of the religious, the other causes which make the local Ordinary competent to judge the case have to be considered (e.g., the location of the property in dispute, the place of contract, the place where an offense was committed, etc.).

ARTICLE II.—OF AUDITORS AND REFEREES

1572. The Ordinary can appoint one or several auditors (i.e., men who prepare the judicial acts), either permanently or for one certain case. The judge can appoint an auditor only for the case which he tries, if the Ordinary has not already provided one (**Canon 1580**). The auditors for the diocesan tribunal should, as far as possible, be taken from among the synodal judges. For the tribunal of religious the auditors must always be taken from religious of the same organization according to the regulations of the constitutions (**Canon 1581**). The office of the auditors is to summon the witnesses and to examine them, and to draw up the other judicial acts according to the tenor of their mandate; they cannot, however, pronounce the

final sentence (**Canon 1582**). An auditor can be removed from office at any stage of the trial by him who appointed him, but his removal should be made only for a just reason and without prejudice to the parties (**Canon 1583**).

1573. The president of a collegiate tribunal must appoint one of his associate judges as *ponens* or referee, who shall report on the case in the meeting of the judges and shall commit the sentence to writing; the president or presiding judge can for a just reason appoint another in his place (**Canon 1584**).

ARTICLE III.—OF THE NOTARY, PROSECUTOR, DEFENSOR VINCULI

1574. At every trial there must be present a notary who acts as secretary or clerk, and the acts are invalid unless they are drawn up by the notary or at least subscribed by him. Wherefore, the judge before beginning the trial of a case must appoint a secretary or clerk from among the legitimately appointed notaries, unless the Ordinary himself has already designated one for that case (**Canon 1585**).

1575. A *promotor justitiae* (prosecutor) and a *defensor vinculi* (defender of the marriage bond and the validity of ordinations) are to be appointed in every diocese. The prosecutor appears in civil trials in which the Ordinary believes that public welfare is at stake, and in criminal cases. The *defensor vinculi* appears in cases in which there is question of the validity of sacred orders or of marriage (**Canon 1586**).

1576. In cases which require the presence of the prosecutor or of the *defensor vinculi,* the acts are null and void, if they were not summoned, unless they were present without being summoned. If they have been legitimately summoned but were not present during some sessions, the acts are valid, but they must absolutely be submitted to them afterwards, in order that they may either orally or in writing offer their objections and propose whatever they believe is necessary or useful in the case (**Canon 1587**).

1577. The same person may hold the office of prosecutor and *defensor vinculi,* unless the great amount of business and of cases forbids it. The prosecutor and the *defensor vinculi* may be appointed generally for all cases or for individual cases (**Canon 1588**). The Ordinary has the right to appoint these

officials, who must be priests of unblemished reputation, doctors in Canon Law or well versed in it, and of tried prudence and zeal for justice. In the court of religious the prosecutor must, moreover, be a member of the same organization (**Canon 1589**). The prosecutor and the *defensor vinculi* who are appointed for cases generally do not lose their office at the vacancy of the bishopric, nor can they be removed by the vicar-capitular (diocesan administrator). On the arrival of the new prelate, they need confirmation in office. For a just cause they may be removed by the bishop (**Canon 1590**).

ARTICLE IV.—OF COURIERS AND APPARITORS

1578. Couriers or messengers shall be constituted, either for all trials generally or for an individual case, to give notice of the judicial acts, unless the approved custom of a tribunal dispenses with these officials. Apparitors (constables) should be appointed for the purpose of executing the sentences and decrees of the judge at his command. The same person can hold both offices (**Canon 1591**). They should be lay persons, unless prudence demands in some special case that clerics be appointed to these duties; their nomination, suspension and removal shall be governed by the same rules as are given for notaries in Canon 373 (**Canon 1592**). The acts which the couriers and apparitors write in the execution of their office, are public documents and as such legal proof of the direct assertions in these instruments (**Canon 1593**).

Chapter II

OF THE ORDINARY TRIBUNAL OF THE SECOND INSTANCE

1579. An appeal from the court of a suffragan bishop goes to the archbishop's court. Cases which were tried in the first instance in the archbishop's court are appealed to that local Ordinary whom the archbishop has designated once for all with the approval of the Apostolic See. Cases tried in the first instance in the court of an archbishop who has no suffragan sees or in the court of a local Ordinary who stands under the immediate jurisdiction of the Apostolic See, are appealed to the Metropolitan mentioned in Canon 285 (**Canon 1594**, §§ 1–3).

1580. In exempt religious organizations appeal from all cases tried before the Provincial Superior goes to the supreme head of the organization as the court of the second instance; cases tried by the abbot of an autonomous monastery are appealed to the supreme head of the respective monastic congregation. Cases of religious which are, according to Canon 1579, § 3, to be tried by the local Ordinary, follow the general rules on appeal given in §§ 1–3 of this Canon (**Canon 1594,** § 4).

1581. The court of appeal must be constituted in the same manner as the court of the first instance, and the same rules, adjusted to the procedure of appeal, shall be followed in the trial of the case (**Canon 1595**). If the case in the first instance was tried by a collegiate tribunal, it must also in the court of appeal be tried by several judges jointly, who may not be fewer in number than in the court of the first instance (**Canon 1596**).

Chapter III

OF THE ORDINARY TRIBUNALS OF THE APOSTOLIC SEE

1582. The Roman Pontiff is the supreme judge for the entire Catholic world, as was stated in Canon 1569, who tries cases either in person, or through the tribunals constituted by him, or through judges delegated by him (**Canon 1597**).

ARTICLE I.—OF THE SACRED ROMAN ROTA

1583. The Sacred Roman Rota is an ordinary tribunal constituted by the Holy See to receive appeals; it is a collegiate tribunal consisting of a certain number of *Auditors* with a Dean as president, who is the first among equals. The Auditors must be priests, and must have at least the degree of Doctor of Civil and Canon Law. The choice of the Auditors is reserved to the Roman Pontiff. The Sacred Rota tries cases either in rotation—three Auditors forming one tribunal—or all Auditors sit together, unless the Supreme Pontiff directs otherwise in some case (**Canon 1598**).

1584. The Sacred Rota tries:

(1) in the second instance cases which have been tried in the first instance in the courts of any of the Ordinaries and have been brought to the Holy See by legitimate appeal;

(2) in the last instance cases which have been tried by the same Sacred Rota or in any other courts in the second and further instance, and which have not become a *res judicata*—i.e., a case in which there is no further appeal granted in law (cfr. Canons 1902–1904).

The Sacred Rota tries in the first instance the cases mentioned in Canon 1557, § 2, and other cases which the Roman Pontiff either by *Motu proprio* or at the request of the parties cites to his court and commits to the Sacred Rota. The Sacred Rota tries these cases also in the second and third instances by rotation of the Auditors or judges, who succeed one another, unless the Roman Pontiff orders otherwise in the rescript by which he commits the case to this Tribunal (**Canon 1599**). The *causæ majores* (cfr. Canons 220 and 1557, § 1) are absolutely excluded from the competency of the Sacred Rota (**Canon 1600**).

1585. From the Decrees of the Ordinaries no appeal or recourse to the Sacred Rota is granted, and the Sacred Congregations exclusively take cognizance of such appeals (**Canon 1601**). An illustration of this kind of cases is the recent case in which the Committee for the Authentic Interpretation of the Code ruled that, in administrative acts of the Ordinary of a diocese (e.g., the conferring of benefices, offices, refusal to grant a benefice, office, etc.), no appeal or recourse to the Sacred Rota is possible. Not only is it forbidden to sue before the Sacred Rota to obtain a benefice or office, which the Ordinary refuses and to which one claims to have a right, but it is also forbidden to sue before that court for the purpose of getting damages which one has suffered by the refusal of the Ordinary.[5]

ARTICLE II.—OF THE SIGNATURA APOSTOLICA

1586. The Supreme Tribunal of the *Signatura Apostolica* consists of several Cardinals, of whom one acts in the capacity of Prefect (**Canon 1602**).

The Signatura Apostolica has ordinary power to try the following cases:

(1) regarding the violation of the secret by a judge of the

[5] Concerning appeal to Rota from administrative acts of Ordinary, cfr. App. III, 70, a and b.

Sacred Rota and regarding damages done by the judges of the Sacred Rota through invalid or unjust acts;

(2) regarding the *plea of suspicion* against one of the Auditors or judges of the Sacred Rota;

(3) regarding the *plea of nullity* against a sentence of the Sacred Rota;

(4) regarding the petition for the *restitutio in integrum* against a sentence of the Sacred Rota which has become a *res judicata;*

(5) regarding the recourses against sentences of the Sacred Rota in matrimonial cases which the Sacred Rota refused to admit to a new trial;

(6) regarding disputes over competency which may arise between inferior tribunals, according to the rule of Canon 1612.

The Signatura Apostolica has delegated power to pass on the petitions offered to the Supreme Pontiff to obtain the commitment of a case to the Sacred Rota (**Canon 1603**).

The tribunal of the Signatura Apostolica is the supreme court of the Church. The date of the origin of this tribunal is not known. From ancient times there were two departments of the Signatura, one called the *Signatura Gratiæ* and the other *Signatura Justitiæ.* The first dealt with dispensations, privileges, and exemptions requested from the Holy See; the other with judicial trials. The two departments were not separated from each other until 1492, when Pope Alexander VI divided the Signatura Apostolica into two distinct branches. The judiciary branch became an ordinary tribunal for trying cases and issuing sentences in the name of the Supreme Pontiff. Before the Supreme Pontiff was deprived of the temporal power over the Papal States, the Signatura Apostolica had farreaching power over the cases tried in the secular courts of the Papal dominions, together with its authority over ecclesiastical courts. In the course of the nineteenth century the Signatura gradually ceased to function. The Roman Rota at about the same time (after the reign of Pope Gregory XVI) also became extinct, and the cases appealed to the Holy See from other courts were decided by the various Sacred Congregations. In 1908, while the codification of the laws of the Church was in progress, Pope Pius X reorganized the entire Roman Curia (i.e., the Sacred Congregations, Offices and Tribunals), and reinstated the two

courts of the Holy See, the Roman Rota and the Signatura Apostolica.

Not all cases appealed from inferior courts to the Holy See can go to the Signatura Apostolica. Canon 1603 defines the extent of the ordinary jurisdiction of the Signatura Apostolica, and from it is evident that the Supreme Tribunal is not a regular court of appeal. The Roman Rota has both appellate and original jurisdiction (cfr. Canon 1599). The cases mentioned in Canon 1557, § 2, come under the original jurisdiction of the court of the Roman Rota, and are tried there in the first instance; as a court of appeal, the Roman Rota has jurisdiction to try cases which have been tried in the first instance in the court of any Ordinary (cfr. 1599, n. 1), having concurrent appellate jurisdiction with the ordinary court of appeal, i.e., the archbishop's court (cfr. Canon 1569 concerning the right of appeal to the Holy See).[5a]

1587. In criminal cases against a judge of the Sacred Rota (cfr. Canon 1603, n. 1), if there is question of a trial in appeal, that trial is to be conducted by the Signatura Apostolica. In the plea of suspicion against a judge of the Sacred Rota, the Signatura Apostolica decides whether the judge of the Sacred Rota is to be removed from the trial of the case. This being done, the case is returned to the Sacred Rota, which proceeds with it according to its ordinary rules, except that the judge against whom suspicion was raised is excluded from or participates in the consideration of the case, according as the Signatura Apostolica may have decreed. In the plea of nullity, the petition for the *restitutio in integrum,* or the recourse against sentences of the Sacred Rota in matrimonial cases (cfr. Canon 1603, nn. 3–5), the Signatura Apostolica decides only whether the sentence of the Sacred Rota is invalid, and whether the *restitutio in integrum* or the recourse should be admitted: if the sentence is declared invalid, or if the petition or recourse is admitted, the Signatura Apostolica remands the case to the Sacred Rota, unless the Supreme Pontiff provides otherwise. In the petition to the Holy See that a case may be committed to the Sacred Rota, the Signatura Apostolica after having obtained the proper information and having heard the interested parties, decides whether the petition is to be granted or refused (**Canon 1604**).

[5a] Concerning authority of the Signatura, cfr. App. III, 71.

1588. The sentences of the Supreme Tribunal of the Signatura Apostolica are effective, even though they do not contain the reasons in fact or in law (cfr. Canon 1894). Nevertheless, at the request of either party to the trial or, if it seems advisable, *ex officio,* this Supreme Tribunal may direct that the reasons for the sentence be published according to the proper regulations of this Tribunal (**Canon 1605**). The *lex propria* of the Signatura Apostolica is contained in the Constitution "Sapienti Consilio" of Pope Pius X, by which the Roman Curia was reorganized.[6]

Chapter IV

OF THE DELEGATED TRIBUNAL

1589. Delegated judges are bound to observe the rules contained in Canons 199–207 and 209 (**Canon 1606**). The judge delegated by the Holy See may employ the officials of the Curia of the diocese in which he must try a case. He may also choose and employ any others, if he prefers, unless the rescript of delegation states otherwise. The judges delegated by the local Ordinaries must employ the officials of the diocesan Curia, unless the bishop for a serious reason orders that special extraordinary officials are to be appointed in some individual case (**Canon 1607**).

Persons who possess ordinary judicial power—e.g., the local Ordinary and the judge (*officialis*) of the diocesan Curia—can delegate to any priest jurisdiction either over all the cases in which his tribunal is competent, or over all cases of a certain kind, or for individual trials. The delegated judge who has been appointed with general faculty to try all cases, or all cases of a certain kind (e.g., matrimonial cases), can subdelegate another as judge for individual cases. A judge delegated by the Apostolic See—i.e., the Roman Pontiff, or the Roman Rota or Signatura Apostolica (cfr. Canon 7)—though he is delegate for one case only, can subdelegate another as judge, unless the tenor of the document of delegation declares that the person was delegated because of his special aptitude to act as judge in the case. Noval ("Commentarium Cod. Jur. Can.," *De judiciis,* n. 182) is of the opinion that the clauses of the rescript—"de

[6] June 29, 1908 (*Acta Ap. Sedis,* I, 20–29).

tua industria, et circumspectione confidentes: prudentiæ tuæ de qua specialiter confidimus''—do not indicate that the delegate is chosen for reason of special qualifications, but are rather general expressions of politeness in the form of the mandate. This seems to be a correct interpretation of these phrases, though, as Noval remarks, there are canonists who see in these phrases an indication that the delegate was chosen for reason of personal qualities, and that he cannot subdelegate his commission to another. If several men are delegated to act as judges in a body (*collegialiter*) and one of them dies, all lose their jurisdiction unless the document of delegation provides for this emergency. The jurisdiction of a delegated judge expires with the expiration of the office of the authority who delegated him, if at the death, resignation, transfer, etc., of the authority the summons have not yet been issued or the parties have not of their own accord presented themselves to the judge prior to the loss of office of the delegating authority (cfr. Canon 1725; Eichmann, ''Prozessrecht,'' 67).

TITLE III

OF THE RULES TO BE OBSERVED BY THE COURTS

Chapter I

OF THE OFFICE OF THE JUDGES AND COURT OFFICIALS

1590. The competent judge shall not refuse his services to a party who legitimately applies to him, subject to the penalties ordained by Canon 1625 (**Canon 1608**). Before a judge summons anybody before his tribunal and sits in judgment, he shall see whether he is competent. In like manner, before he admits a plaintiff to plead his case, he is bound to ascertain whether the plaintiff has a right in law to sue. It is not necessary that this investigation of the judge be entered into the minutes of the case (**Canon 1609**).

1591. If exception is taken to the competency of the judge, the judge himself must decide this question. In case of exception being taken to his relative incompetency, the judge's decision in favor of his competency does not admit of appeal.

If the judge declares himself incompetent, the party who regards himself as aggrieved may within ten days take an appeal to the higher court (**Canon 1610**). The judge who at any stage of the trial finds himself absolutely incompetent is bound to declare his incompetency (**Canon 1611**).

The judge to whom a party has recourse for the vindication of his rights or the redress of injuries suffered through unlawful actions of others, is obliged in virtue of his office: (1) to examine whether he has jurisdiction to try the case, and (2) whether the party has a right to sue. The incompetency of a judge may be either *absolute* or *relative*. There are a few cases only in which judges inferior to the Holy See are absolutely incompetent, and these are stated in Canons 1556–1557; in other cases the incompetency is relative (cfr. Canons 1558–1568). If, in a case of relative incompetency, the defendant raises objection to the right of the judge to try the case, the judge himself investigates whether he has jurisdiction to try the case and, if he declares himself competent, the law does not permit appeal from his decision. If he declares himself incompetent and therefore refuses to try the case, the party who thinks himself incommoded by that decision may appeal to the higher court within ten days to obtain the decision of that court on the competency of the judge.

1592. If a controversy arises between two or more judges as to which of them is competent in some affair, the matter shall be decided by the immediately higher tribunal. If the judges between whom there is a conflict of competency are subject to different higher tribunals, the decision of the controversy is reserved to the higher tribunal of that judge to whom the case was first taken. If the judges have no higher court, the conflict is to be settled either by the Legate of the Holy See, if there is one, or by the Signatura Apostolica (**Canon 1612**).

1593. A judge should not accept for trial a case in which he is to some extent interested by reason of consanguinity or affinity in any degree of the direct line or in the first or second degree of the collateral line, or as a guardian or trustee of one of the parties, or as an intimate friend or an enemy, or because he has much to gain or lose through the case, or has in the same matter been advocate or procurator for one of the parties. Under the same circumstances the prosecutor and the *defensor*

vinculi must likewise refrain from acting in the case (**Canon 1613**).

1594. When a plea of suspicion is entered against a judge, although his competence in the case is admitted, and this exception is taken against the single delegated judge or against the tribunal or the majority of the delegated judges, the person who delegates the judge or tribunal shall decide whether the objection is to be sustained. If the exception of suspicion is entered against one or other of several delegated judges (even the presiding judge), the other delegated judges rule on the objection. If the exception is taken against an Auditor of the Sacred Rota, the Signatura Apostolica rules on the objection, as stated by Canon 1603, n. 2; if against the *Officialis* (judge of the diocesan Curia), the bishop; if against an auditor (assistant or secretary of a judge), the principal judge rules on the objection (**Canon 1614**, § 1).

1595. If the Ordinary himself tries a case and the exception of suspicion is entered against him, he should either abstain from trying the case or commit the ruling on the question of suspicion to the immediately higher judge. If the exception of suspicion is entered against the prosecutor or the *defensor vinculi,* or against other officials of the court, the presiding judge of the tribunal or the judge, if one only tries the case shall rule on the objection (**Canon 1614**, §§ 2–3).

1596. If the one judge who tries a case, or one or all the judges of a collegiate tribunal, have been declared suspect, the judges must be changed, but the case stays in the same court. The Ordinary must appoint other acceptable judges in place of those who were declared suspected. If the Ordinary himself has been declared suspect, the immediately higher judge shall appoint other judges to try the case (**Canon 1615**). The exception of suspicion must be decided as expeditiously as possible after hearing the parties and also the prosecutor or *defensor vinculi,* if the latter are interested in the case and no objection has been entered against them (**Canon 1616**). With regard to the time within which the exceptions of incompetence and of suspicion must be raised, the precepts of Canon 1628 shall be observed (**Canon 1617**).

1597. In an affair which pertains to private persons only, the judge cannot interfere except at the request of one party.

In offenses, however, and in matters concerning the public weal of the Church or the salvation of souls, the judge can proceed *ex officio* (**Canon 1618**).

1598. If the plaintiff in a private suit does not offer proofs in his favor which may properly be urged, or if the defendant does not plead proper exceptions, the judge shall not supply the deficiencies. If, however, the public welfare or the salvation of souls is involved, the judge may and must supply the deficiencies in pleading (**Canon 1619**). In private affairs the parties who call upon the court to settle their difficulties and determine their rights, must plead and defend their claims; the court is disinterested, and in fact it would rather that they settle their disagreement out of court. The court is not to take an active part in the dispute by helping the parties to prove or defend their case. An exception is made in favor of minors and other persons whom the law holds equivalent to minors, since the judge may assist these to plead or defend their case (cfr. Canon 1759). In cases involving the good of souls or the public welfare (e.g., all criminal cases concern the public welfare), the court is interested in getting all the proofs of the plaintiff as well as the full defence of the defendant.

1599. The judges and courts shall endeavor to finish all cases as speedily as possible, without prejudice to justice. Cases shall not be protracted in the court of the first instance over two years, or in the court of second instance over one year (**Canon 1620**).

The Administering of Oaths

1600. Except the bishop when he sits in person as judge, all persons who constitute or assist a tribunal must take an oath before the Ordinary or the judge by whom they are chosen, or before an ecclesiastic delegated either by the Ordinary or the judge, that they will fulfill their office properly and faithfully. The oath is to be taken at the beginning of their office, if they are regular officials, or before the beginning of the trial, if they were appointed for one particular case only. Even a judge delegated by the Apostolic See and the ordinary judge in an exempt clerical religious organization are bound to take the oath when the tribunal is first constituted; the notary of the tribunal shall assist at the taking of the oath and make record of it (**Canon 1621**).

1601. Whenever the oath is taken either by the judges, or the officials of the court, or the litigants, witnesses, or experts, it must always be taken under the invocation of the Divine Name, priests meanwhile touching their breasts and laymen touching the Book of the Gospels. In administering the oath to the litigants, witnesses and experts, the judge shall regularly remind them of the sacredness of the act, of the very serious nature of the crime of perjury, and of the penalties to which one becomes liable who, after being sworn, tells a falsehood in court. The oath shall be taken according to a formula approved by the judge, shall be taken in the presence of this judge or his delegate, and in the presence of both or either of the parties, if they desire to be present when the oath is tendered (**Canon 1622**).

1602. In criminal cases the judges and officials of the court are always bound to secrecy; they are also bound in civil cases, if the revelation of some of the proceedings might be prejudicial to the parties. They are, furthermore, always bound to absolute secrecy concerning the discussion of the case in the tribunal before the sentence was delivered, and concerning the various votes and opinions of the judges. The judge can also bind by oath to secrecy the witnesses, experts, litigants and their lawyers and proxies, if the nature of the case or of the evidence is such that from the divulging of the proceedings and proofs the good reputation of others might be endangered, or discord, scandal, or other untoward consequences might result (**Canon 1623**).

1603. The judge and other officials of the court are forbidden to accept any presents (*munera*) on the occasion of a trial (**Canon 1624**). As justice must not be jeopardized by an attempt to influence unduly the judge and others who assist him, the law forbids them to accept presents *on the occasion* of a trial. While the trial is going on, presents from the parties or from their friends or relations have the appearance of a bribe. The term *munera* is very general, as it includes not only gifts of personal or real property, but also all services and favors.[7]

The former law was more explicit than the Code in demanding that the ecclesiastical judge give his services gratuitously—so much so indeed that the ordinary judges were not allowed to demand indemnity from the parties for expenses (e.g., in trav-

[7] Lega, "De Judiciis Ecclesiasticis," I, n. 83.

cling to a distant place within the territory of their jurisdiction to gather information concerning the facts in the case). Moreover, the ordinary judges who needed an assistant in the study of the case could not charge the parties with the expenditures of the assistant. The benefice connected with their office was considered sufficient for incidental expenditures. With regard to delegated judges, the Holy See prescribed that only men who had a benefice in the cathedral church should be delegated, and that they were to be indemnified, if the case demanded travel outside their territory. If they needed an assistant in the study of the case, they could allow him a becoming salary, and charge it to plaintiff and defendant jointly. Other officials of the court were to be paid from the ordinary fees charged for judicial acts. Though the above regulations have not been embodied in the Code, there is no doubt that they should serve as a guide in the matter for the Ordinaries, who should thus appoint as judges and court officials men who have a benefice or other source of revenue which suffices for their proper maintenance. For other expenditures of judicial acts, the bishops of each ecclesiastical province are ordered by Canon 1909 to fix a tariff or schedule of taxes.

In connection with the prohibition of Canon 1624 concerning the acceptance of presents by the judge and other officials of the court, the question arises whether the acceptance of the so-called *xenia* or *munuscula* from the parties to a trial is also forbidden. The law of the Decretals tolerated the acceptance of food and drink, which could be consumed within a few days (*Liber Sextus Bonifacii VIII,* c. 11, *De rescriptis*). Probably they are not forbidden, because they were not considered *munera,* and the Code forbids the acceptance of *munera* (Noval, "Commentarium," *De Judiciis,* n. 215; Augustine, "Commentary," VII, 71, who holds that gifts of food and drink are also forbidden by Canon 1624).

1604. Judges whose competency is certain and evident and who refuse to try a case, judges who rashly declare themselves competent, and judges who through culpable negligence or malice follow an invalid procedure to the injury of others, or do an injustice or otherwise cause damage to the contending parties, are liable for damages and can be punished by the local Ordinary, or, if the bishop has been guilty, by the Apostolic See.

The proceedings against the judge may be instituted either at the request of the parties, or even *ex officio*. The penalties are to be proportioned to the gravity of the guilt, and may even extend to the deprivation of the office (**Canon 1625, § 1**).

1605. Judges who dare to violate the law of secrecy or communicate to others secret proceedings in any manner, shall be punished with fines and other penalties, even with deprivation of office, in proportion to the gravity of their guilt: if the particular laws prescribe graver penalties in any cases, these laws shall remain. The officials and assistants of the court are subject to the same penalties if they have been guilty of similar delinquencies, and may be punished also by the judge (**Canon 1625**).

1606. When the judge foresees that the plaintiff will probably disregard the ecclesiastical sentence if it should happen to be adverse, and that therefore the rights of the defendant are not sufficiently protected, he can at the petition of the defendant, or even *ex officio*, force the plaintiff to give sufficient security for the observance of the ecclesiastical sentence (**Canon 1626**).

Chapter II

OF THE ORDER OF THE CALENDAR

1607. The judges and tribunals are bound to try the cases brought to them in that order in which they came to the court, unless some one of them requires a more speedy decision than the others. In the latter case, the preference must be stated by special decree of the judge or the court (**Canon 1627**).

1608. Dilatory exceptions, especially those which have reference to the personages and the manner of the trial, must be proposed and ruled on before the *contestatio litis*, unless they emerged only after the *contestatio*, or the party raising the exceptions affirms under oath that he did not until then have knowledge of them. The exception of the absolute incompetency of the judge may be raised by the parties at any period of the trial or stage of the case (i.e., in the first, or second, or any further trial of the case). The exception of excommunication can be also raised at every period and every stage of a trial, provided it is raised before the final sentence. In the case

of *excommunicati vitandi* or *excommunicati tolerati* censured by declaratory or condemnatory sentence, they must be always excluded *ex officio* by the court (**Canon 1628**).

As the judicial trial must proceed orderly from step to step, certain pleas have to be made at specified stages of the case under penalty of forfeiting the right to make them. The bill of complaint by the plaintiff to the judge is the first step in civil cases; the decision of the judge on his own competency and on the right of the plaintiff to bring the action is the second step. The third is the summons of plaintiff and defendant. The fourth is the *contestatio litis,* which consists in the appearance of the litigants in court, the reading of the bill of complaint, and the denial of the complaint by the defendant for the purpose of placing the case in litigation (cfr. Canons 1726–1727). Now, Canon 1628 prescribes that dilatory exceptions must be made before the *contestatio litis,* because with that contestation the first stage or instance of the trial commences (cfr. Canon 1732), and dilatory exceptions aim at evading the suit for the present (e.g., by objecting to the petition for payment because it is not yet due, or by objecting to the relative competency of the judge, or by objecting that the judge is prejudiced, interested in the case, etc.). If the exception is sustained, the action which tentatively commenced with the summons has to be dropped by the court temporarily or permanently. Canon 1628 makes allowance for exceptional circumstances in which the dilatory exceptions can be raised even after the *contestatio litis.*

The defendant may raise the exception of excommunication of either the plaintiff or the judge at any time of the trial, for, in virtue of Canon 2263, every excommunicated person is barred from acting as plaintiff in ecclesiastical trials, unless he brings suit to contest the justice or legality of his excommunication, or unless by proxy he institutes some other action which has the purpose of averting injury to his spiritual welfare (cfr. Canon 1654). The exception of excommunication may be raised against the judge, for, in virtue of Canon 2264, an excommunicated judge cannot licitly conduct a trial; and, if he is an *excommunicatus vitandus* or has been excommunicated by declaratory or condemnatory sentence of his superior, the judicial acts of the judge are invalid (cfr. Canon 2264). If the plaintiff is an *excommunicatus vitandus,* or has been excommunicated by de-

claratory or condemnatory sentence, it is not necessary for the defendant to raise the objection—though he may—because the judge of his own initiative is obliged to refuse the plaintiff permission to bring the suit.

1609. Peremptory exceptions which put an end to the litigation—e.g., the exception of *res judicata* (final and unappealable sentence), agreement, etc.—must be raised and ruled on before the *contestatio litis*. Should one party raise them later, his plea is not to be rejected, but he is held liable for the costs, unless he proves that he did not maliciously delay the raising of the exception. Other peremptory exceptions must be raised after the *contestatio litis*, and they are to be ruled on at the proper time according to the rules concerning incidental questions (**Canon 1629**).

1610. It is preferable that *reconventiones* (counter-claims by the defendant) be made immediately after the *contestatio litis*, but they may be brought at any time during the trial before the sentence is rendered. The counter-charges are to be tried simultaneously with the main suit, unless it is necessary to try them separately, or the judge thinks a separate trial more expedient (**Canon 1630**).

The *actiones reconventionales* are complaints made by the defendant against the plaintiff in the course of the same suit. These counter-claims of the defendant are ordinarily to be made immediately after the *contestatio litis* (i.e., in connection with the denial by the defendant of the claim of the plaintiff). Canon Law does not require that the counter-claim of the defendant should concern the same matter about which the plaintiff brings suit, but it may deal with an entirely different matter: for example, when a church through its pastor sues another church for payment of goods bought by and delivered to the defendant church, the defendant can plead as an off-set any other claim it has against the plaintiff church—e.g., for interest on a loan due and unpaid, for work done for the plaintiff for which payment is due and unpaid, etc. (cfr. Canons 1690–1692). This counter-claim may be made even after the *contestatio litis*, but must be made before the issuance of the sentence. If made after the sentence has been pronounced, the defendant can urge his claim only by instituting a new action. The counter-claim must be made in a civil suit, inasmuch as private individuals

may not act as plaintiffs in a criminal suit, because that is the province of the prosecutor.

1611. All questions regarding the security to be given to cover the cost of the trial, about granting a defence free of charge (if a request to this effect should be made right at the beginning of the case), and other similar points are as a rule to be settled before the *contestatio litis* (**Canon 1631**).

1612. If, after the principal question has been submitted to the court, a so-called *prejudicial question* should arise (i.e., a question on the solution of which the settlement of the principal question depends), this latter issue must be first decided by the court (**Canon 1632**).

If incidental issues arise out of the main controversy, those incidental issues should first be settled which prepare the way for the solution of the other issues. If there is no logical connexion in the incidental issues, they shall be decided in the order in which they have been raised by either party. If the charge "de spolio" (cfr. Canons 1698 and 1699) arises incidentally, that issue must be settled before all others (**Canon 1633**).

The *prejudicial question* is somewhat similar to an exception (though it is of a more general character), for, just as an exception may affect the claim of the plaintiff, so may the prejudicial question diminish or bar his claim. Because of the damaging effect on the claim of the plaintiff, the prejudicial question has first to be decided before the case can proceed. It is evident that a person who makes an assertion in court, must prove what he asserts, and therefore the one who raises the prejudicial question must prove the point he raises: for example, if in a case of the inheritance of children the validity of the marriage (cfr. Canon 1972) or the legitimacy of a child is questioned, the one who raises the question must adduce his proofs, and the judge must rule on the question before any further proceedings.

Chapter III

TERMS OF POSTPONEMENT AND *FATALIA LEGIS*

1613. By *fatalia legis* are meant fixed periods upon the lapse of which the law denies the right to sue; they cannot be prolonged. Terms of postponement fixed by the court or by agree-

ment of the parties may before their expiration be extended by the judge for a just cause, after hearing or at the petition of the parties. The judge, however, must beware lest the trial be protracted too long by the prorogation (**Canon 1634**).

If the day fixed for a judicial action is a holiday, and the order of the judge does not explicitly state that the court is nevertheless to sit for the trial of cases, the prorogation is understood to extend to the next following day that is not a holiday (**Canon 1635**).

The periods or terms fixed by the procedural law of the Code —the *termini legales*—demand that certain actions must be done within the specified time under pain of forfeiting the right to act, and these terms cannot be prolonged by the court even with the consent of both parties. These terms are indicated in various Canons of Book IV of the Code (e.g., Canons 1610, 1684, 1688, 1695, 1698, 1703, 1709, 1881). The terms which are committed to the discretion of the judge (*termini judiciales*), and the terms which the law permits the parties to fix by mutual agreement and with the approval of the judge, may be prolonged by the judge before their expiration, if the parties request it, or also at the initiative of the judge after having heard the parties concerning the prolongation.

Chapter IV

OF THE PLACE AND TIME FOR COURT SESSIONS

1614. Though the bishop has the right to hold court at any place within his diocese, with the exception of exempt places, he should nevertheless designate a hall at his residence which is to serve as the ordinary place for trials. A crucifix should occupy a prominent place in this hall, and a Book of the Gospels must be provided (**Canon 1636**).

A judge who has been forcibly expelled from his territory, or who is prevented from exercising jurisdiction there, may exercise his jurisdiction and pronounce sentence outside his territory, but he must inform the local Ordinary of the fact that he holds court in his diocese (**Canon 1637**).

1615. In every diocese the Ordinary, after considering fully the local circumstances, shall fix by public decree convenient days and hours during which regular access can be had to the

court to request its services in the administration of justice. However, for a just reason and whenever there is danger in delay, the faithful may invoke the services of the judge at any time to protect their rights or the public welfare (**Canon 1638**).

1616. Holydays of obligation and the last three days of Holy Week shall be observed as *dies feriati* (i.e., days on which judicial procedure must rest). On these days it is forbidden to issue summons, have court hearings, examine the parties and witnesses, accept proofs, and issue or execute decrees and sentences, unless necessity, Christian charity, or the public welfare demand otherwise. The judge should in individual cases decide and announce whether and how far any judicial acts should take place on these days (**Canon 1639**).

Under the former Canon Law the judicial acts done on holydays of obligation were null and void, unless necessity or Christian charity prompted the judge to act. The Code retains the prohibition of judicial procedure on holydays, but it does not invalidate the acts. In the former law there was also a prohibition to hold court at night; the Code does not mention this law, but states that the days and hours for regular court sessions should be made convenient for the people.[8]

Chapter V

OF THE PERSONS TO BE ADMITTED TO COURT SESSIONS AND OF THE MANNER OF DRAWING UP AND PRESERVING JUDICIAL ACTS

1617. While the court is in session, outsiders shall be excluded from the court-room, and those only shall be present whom the judge thinks necessary for conducting the trial. Any of those present who gravely offend against the respect and obedience due to the court, may be at once and without further procedure forced to obey through censures and other appropriate penalties imposed by the judge in whose presence they misbehave. Advocates and procurators who are guilty of such misconduct, may be deprived by the judge of the right to conduct other cases before ecclesiastical courts (**Canon 1640**).

The *procurator* mentioned frequently in the procedural law is a proxy or substitute for the plaintiff or defendant, and takes the place of such party in court. As a rule, it suffices that the

[8] Lega, "De Judiciis Ecclesiasticis," I, nn. 363–368.

proxy appears in court when the presence of the one whom he represents is demanded, unless the law or the explicit command of the judge requires the personal presence of the plaintiff or defendant at certain judicial proceedings (cfr. Canons 1647 and 1655–1666).

1618. If some of the judicial proceedings involve a person who is ignorant of the vernacular, and the judges and parties do not understand the language of such person, a sworn interpreter against whom neither party raises a legitimate objection is to be designated and employed by the judge (**Canon 1641**).

1619. All the acts of a trial—both the *acta causæ* (those which relate to the merits of the case, e.g., decisions and all proofs) and the *acta processus* (those which relate to the form of procedure, e.g., summons, declarations or notices, etc.)—must be committed to writing. In so far as possible, the acts shall be drawn up in Latin, unless there is a good reason to do otherwise; but the examination and answers of the witnesses and similar acts must be drawn up in the vernacular (**Canon 1642**). Every folio of the acts shall be numbered, and the signature of the actuary with the seal of the court shall be put on every folio. When an individual act is completed, or interrupted and postponed for another session, it shall be signed by the actuary and the judge (or the presiding judge, if several judges sit in the same case). Whenever the signature of the parties or the witnesses is required in judicial acts, and a party or a witness is unable or refuses to sign his name, a note to that effect shall be made in such acts, and the actuary and the judge shall also attest that the act itself was read verbatim to the party or to the witness, and that the party or witness could not or did not want to subscribe to it (**Canon 1643**).

The actuary (*actuarius*) gets his name from the office of writing the acts of the judicial proceedings. He is one of the absolutely necessary officials in a trial, and the acts are null and void unless they are written or at least signed by the actuary. To function as actuary in a trial, a person must have been appointed a notary by the competent authority; the judge may appoint as actuary for a case to be tried by him any of the notaries of the respective diocese where the case is tried, unless the Ordinary has already assigned a notary for the trial (cfr.

Canon 1585). The chancellor of a diocese becomes a notary by appointment to the chancellorship. The bishop may nominate other notaries for acts of every kind, for judicial acts generally, for an individual trial, or for some specified affair (cfr. Canons 372–373).

1620. In case of appeal, copies of the acts recorded as stated in Canons 1642–1643 shall be bound into a fascicle (with an index of all acts and documents and an affidavit of the actuary or chancellor, testifying that the copies are exact and complete), and forwarded to the higher court. If copies cannot be made without great inconvenience, the original acts shall be forwarded with proper precautions. If the acts of the trial must be forwarded to a place where the vernacular language of the first court is unknown, the acts shall be translated into Latin, due precaution being taken to give a faithful translation. If the acts were not drawn up in the proper form and style, they may be rejected by the superior court; in that case those responsible for their faulty drafting must have them redrafted and forwarded at their own expense (**Canon 1644**).

1621. On the completion of the trial, the documents should be returned to the parties, unless in criminal cases the judge shall decide that the public interest demands the retention of some document. All documents which remain with the court are to be deposited in the diocesan archives—in the public or the secret archives, as the nature of the case demands. The notaries, actuaries, and the chancellor are forbidden to furnish, without an order from the judge, copies of judicial acts and documents which have become the property of the court. Anonymous letters which add nothing to the merits of a trial, and even signed letters which are certainly slanderous, shall be destroyed (**Canon 1645**).

TITLE IV

OF THE PARTIES TO A TRIAL

Chapter I

OF THE PLAINTIFF AND THE DEFENDANT

1622. Every person not prohibited by the Sacred Canons may institute a suit as plaintiff. The defendant who is legitimately

sued must answer (**Canon 1646**). Though the plaintiff or the defendant has appointed a procurator or a lawyer to take his part in court, he must always appear in person, when either the law or the orders of the judge demand his presence (**Canon 1647**).

1623. Parents, tutors and guardians are bound to plead or defend the cases of minors and persons without the use of reason. If the judge thinks that the rights of such persons are in conflict with the rights of the parents, tutors or guardians, or that they live at so great a distance from the parents, tutors or guardians that the latter cannot at all, or can only with great difficulty represent their charges in court, a guardian *ad litem* is to be appointed by the judge. However, in spiritual cases or in cases connected with spiritual affairs, minors who have attained the use of reason can sue and defend without the consent of the parent or tutor; if they are fourteen years of age, they can in person plead their case, but otherwise they must plead through a tutor appointed by the Ordinary, or by a tutor chosen by the minor with the approval of the Ordinary (**Canon 1648**).

1624. Collegiate and non-collegiate moral or legal persons are to be represented in court by the rector or administrator, except in the special cases mentioned in Canon 1653. If the rights of the legal person conflict with those of the rector or administrator, the Ordinary shall designate a procurator to represent the legal person (**Canon 1649**).

1625. Persons who because of their spendthrift habits have been deprived of the administration of their goods, and weak-minded persons can appear personally in court only to answer for their own offenses, or at the order of the judge; otherwise they must sue and be sued through their guardians (**Canon 1650**).

Before a guardian assigned to a person by the civil authority can be admitted by the judge into court, the consent of the proper Ordinary of that person is required. The Ordinary may also appoint another guardian for the ecclesiastical forum, if after mature reflection he thinks such appointment prudent (**Canon 1651**).

1626. Without the consent of their Superiors, religious have no personal standing in court, except in the following cases:

(1) if the suit is concerned with vindicating against the religious organization rights which they have acquired by profession;

(2) if they legitimately live outside the religious house, and the defence of their rights becomes urgent;

(3) if they wish to denounce their superior (**Canon 1652**).

1627. Local Ordinaries may appear in court in the name of the cathedral church or of the *mensa episcopalis;* but, to act licitly, they must consult the Cathedral Chapter (or the diocesan consultors) or the board of administration, securing their advice or their consent according to the amount of money involved in the case, as prescribed by Canon 1532.

All beneficiaries can sue or be sued in the name of their benefice, but to act licitly they must observe the precepts of Canon 1526.

Prelates and the superiors of chapters, sodalities and any other college, cannot act in court in the name of their community, unless they have obtained its consent in the manner defined by its statutes (**Canon 1653,** §§ 1–3).

A pious institution or community has the right to hold these persons liable for damages who, in disregard of the three foregoing paragraphs of this Canon, acted in court without the consent or advice prescribed by law.

The local Ordinary himself may either in person or through others act in court for the legal persons who are under his jurisdiction, whenever the administrator of a legal person fails to defend, or is negligent in the defence of its rights.

Superiors of religious organizations cannot act in court for their community, except in the manner prescribed by the constitutions of their organization (**Canon 1653,** §§ 4–6).

1628. *Excommunicati vitandi,* and *excommunicati tolerati* after a declaratory or condemnatory sentence, may personally institute an action in court only to attack the justice or legality of their excommunication; through a procurator, they may act in court to avert any other spiritual harm; in all other cases they are not admitted to institute a suit in ecclesiastical courts. Other excommunicated persons are generally admitted to act in court (**Canon 1654**).

Canon 1654 states that other excommunicated persons (i.e., those who are not *excommunicati vitandi* or persons excommunicated by declaratory or condemnatory sentence) are generally

admitted to act in court. This Canon is modified by Canon 1628 which gives the opposing party the right to raise the exception or objection of excommunication (cfr. n. 1608). The sense of Canon 1654 is, therefore, that other excommunicated persons may act in court unless the exception of excommunication is raised against them. Under the law of the Decretals of Pope Gregory IX (c. 7, *De judiciis,* lib. II, tit. 1), every excommunicated person was forbidden to appear personally in court, either as plaintiff or as defendant. Lest he derive benefit from his excommunication, the law provided that he could be sued, but he had to appear in court by proxy. Canon 1654 allows even the *excommunicati vitandi* to appear personally in court to bring suit for the purpose of testing the justice or legality of their excommunication, and to institute by proxy any other suit which has for its purpose the averting of spiritual harm from the excommunicated person (e.g., to sue for the declaration of nullity of his marriage).

Chapter II

OF PROXIES IN LITIGATIONS AND ADVOCATES

1629. In criminal trials the accused must always have an advocate, either chosen by himself or appointed by the judge. Also in civil trials, when minors are involved or the case affects the public welfare, the judge shall *ex officio* assign an advocate to an unrepresented defendant, or, if necessary, add another advocate to the one chosen by such party. Apart from these cases, the party can freely appoint an advocate or a proxy, and the party can also plead and defend the case himself, unless the judge thinks that the services of an advocate or a proxy are necessary in the case. If the bishop is in the case (as plaintiff or defendant), he should appoint a proxy to appear in his name (**Canon 1655**).[8a]

The *advocatus* (attorney) or lawyer denotes a person who is entitled by commission of the competent authority to plead the case of a plaintiff or defendant in court. The proxy (*procurator*) is a personal representative of the plaintiff or defendant, and is properly styled *procurator ad litem,* because the term *procurator* without specification denotes a personal rep-

[8a] Representatives of parties in trials before the Roman Curia, cfr. App. III, 72.

resentative in any affair in which the law permits to act through a representative—e.g., the proxy of a sponsor at Baptism (cfr. Canon 765), the proxy of one of the parties in marriage (cfr. Canon 1088). Generally the principle is recognized in Canon Law that one may do those things through another which one can do in person. An agent (*negotiorum gestor*) is likewise a personal representative of the principal, but differs from the *procurator ad litem*, because the agency may extend to a great variety of affairs and need not be as formal as the appointment of a proxy in a trial, while the latter may not act in court for his principal until after he has deposited with the court the formal document of appointment as proxy for the lawsuit (cfr. Canon 1659). If the proxy in a lawsuit has not been appointed by a valid mandate, his actions in court are invalid and the sentence is null and void (cfr. Canon 1892, n. 3).

1630. A party may appoint only one proxy, who cannot choose a substitute unless this power has been explicitly granted to him. If for a just reason several proxies are appointed by the same party, they must be appointed with equal and independent power so that the one who acts first for the party excludes the others. Several advocates may be appointed to act together for a party. Both offices, that of proxy and of advocate, may be held by one and the same person on behalf of the same client in the same case (**Canon 1656**).

1631. The proxy and the advocate must be Catholics, at least twenty-one years of age, and of good reputation. A non-Catholic is admitted only by way of exception and in case of necessity. The advocate must in addition have the degree of doctor, or be otherwise expert in at least Canon Law. Religious may be admitted (unless their constitutions forbid it) in cases only in which the good of their own organization is concerned; they need the permission of their superior (**Canon 1657**).

1632. Every person who according to the foregoing Canon is qualified can be appointed by a party as proxy, and it is not necessary that the Ordinary first approve the choice. A person cannot act as advocate at a trial in court unless he has been approved by the Ordinary, which approval may be general for all cases, or particular for an individual case. In a trial before a judge delegated by the Holy See, it is the right of the delegate to approve and admit the advocate whom the party desires to employ. The proxy and advocate in the cases between exempt

religious of the same clerical organization, or between two provinces or two autonomous monasteries of exempt religious of the same organization (as described in Canon 1579, §§ 1–2), are to be chosen from the same community, and, before they begin to act, they need the approval of the superior who acts as judge in the case. In cases of religious which, according to Canon 1579, § 3, are tried in the court of the local Ordinary, even outsiders may be admitted to act as proxy or advocate (**Canon 1658**).[8b]

1633. The judge shall not admit the proxy to plead until he has deposited in court a special written mandate of the party to represent him in the litigation, which mandate may be given at the foot of the summons, and signed by the party, with place and date. If the person who issued the mandate does not know how to write, this must be indicated in writing, and a pastor, or a notary of the Curia, or two witnesses, shall sign the mandate in place of the person (**Canon 1659**). The mandate to the proxy must be preserved with the acts of the case (**Canon 1660**).

The advocate who is to plead a case must have from the party or from the judge a commission similar to the mandate of the proxy, which commission must be embodied in the acts of the case (**Canon 1661**).

The pastor who signs the mandate of a person unable to sign his own name need not be the proper pastor of that party, for Canon 1659 merely has "parochus subsignet," but he must be within the territory of his parish when he signs the document, as was decided in reference to the signing by a pastor of the betrothal agreement (Sacred Congregation of the Council, March 28, 1908; *Acta S. Sedis,* XLI, 288). The notary of the Curia is not necessarily the chancellor of the diocese, but may be any notary appointed by the bishop either with general faculty for all acts or for judicial acts only, for Canon 373 states that the bishop may appoint other notaries besides the chancellor.

1634. Unless the proxy has a special mandate, he cannot renounce the action, or instance, or judicial acts, nor can he make a friendly settlement or agreement with the other party, nor agree to have the case settled by arbitration, nor can he take an oath for his party, nor ask the other party to take the oath, and generally he cannot do those things for which the law requires a special mandate (**Canon 1662**). As to the oath demanded or

[8b] Advocate cannot act without approval of Ordinary, cfr. App. III, 72.

permitted by Canon Law, Canon 1316 rules that it cannot be validly taken by proxy.

1635. A proxy or an advocate may be rejected by decree of the judge, issued either *ex officio* or at the petition of one of the parties, but there must be a just cause for rejecting him (**Canon 1663**). Advocates and proxies can be removed by the person who constituted them, but there remains the obligation to pay the fees due to them. The removal does not take effect until it has been made known to them, and, if the *contestatio litis* has already taken place, it does not take effect until the judge and the adverse party have also been notified. After the final sentence has been issued, the proxy has the right and duty to make the appeal, if the principal does not refuse (**Canon 1664**).

1636. Proxies and advocates are forbidden to buy the lawsuit, or to make an agreement for immoderate profits or for part of the thing in litigation. If they do so, the agreement is invalid, and they may be punished by the judge or by the Ordinary with a fine; an advocate may, moreover, be suspended from office, and even be deprived altogether of the right to act as advocate, if he should have failed in this matter repeatedly (**Canon 1665**). Advocates and proxies who for the sake of gifts or promises or any other reason have violated the duties of their office, shall be deprived of their office, and, besides being bound to repair the damages, they shall be punished with fines and other appropriate penalties (**Canon 1666**).

TITLE V

OF ACTIONS AND EXCEPTIONS

1637. Every right can be enforced not only by action in court, unless the contrary is explicitly stated, but also by exception, which is always open and is of its very nature perpetual (**Canon 1667**). One's rights can be protected directly by instituting an action in court, and indirectly by defending one's rights attacked by another through the medium of exceptions. The right to sue is forfeited under certain conditions, while the right to raise an exception does not cease by prescription, or in any other way in which the right to sue may lapse. Though, as a rule, every right can be enforced through the medium of

the court, still there are cases where the right cannot be enforced: for example, from the promise of marriage no right is given in law to force the other party to keep the promise, but only to sue for damages caused by an unwarranted breach of the promise (cfr. Canon 1017); in so-called "outlawed" debts and obligation, there remains the natural obligation, to pay, but it cannot be enforced by action in court (cfr. Canons 1701–1705); an excommunicated person, if a *vitandus* or if his excommunication has been pronounced by the court, cannot while under that censure sue to enforce his rights (cfr. Canon 1654).

1638. The suit or action in civil cases is twofold, either the *actio petitoria* or the *actio possessoria:* the former consists in the vindication of one's rights (in reference to objects, persons, acts, etc.), because the law gives one such right; the latter is a suit to obtain possession of an object, or quasi-possession, if there is question of obtaining free exercise of one's rights (**Canon 1668**). The title or proprietory rights are not considered in the possessory actions, but only the question who is entitled to possession or quasi-possession.

In the *actio petitoria* the plaintiff bases his claim to a thing or a right because the law gives him title to it; in the *possessory action* he bases his claim on possession of things corporeal or quasi-possession of things incorporeal. The pleading of one's rights is reduced to the least possible formalities in Canon Law, while, in the old Roman Civil Law and in the English and American Common Law, the pleading was extremely formal. The Canon Law and the more recent law of most states of the American Union and other countries adhere to the principle that there is a remedy through court action for the enforcement of every right. It suffices to plead a state of facts, which sufficiently show the legal right to one's claim. One may in the same case plead the petitory and possessory actions combined. For example, A sues for the return of a thing to him because he is the rightful owner (petitory action), and also for the regaining of possession because B has either by stealth or by force taken the thing out of A's possession (possessory action). If A fails in his proof of ownership, he still has a chance to obtain possession of the thing by proving his second claim.

1639. A plaintiff may bring several cases simultaneously against the defendant either in the same matter or in different

matters, provided they do not conflict with each other, and they do not exceed the competency of the court. The defendant is not forbidden to make use of several exceptions, even contradictory ones (**Canon 1669**). The plaintiff may in the same instance bring a possessory and a petitory suit, unless the defendant raises the exception of spoliation. The defendant who is sued in a petitory action can bring a counter-suit of a possessory character, and *vice versa,* unless there is question of spoliation (**Canon 1670**).

1640. Before the conclusion of a case, a plaintiff may turn from a petitory action to a possessory action to acquire or regain possession. For a just reason the judge may allow this change of the action even after the case is closed, but before the final sentence. The judge may give sentence on the several actions of a plaintiff in one sentence, or he may decide one after the other, as he thinks best for the speedier and fuller protection of rights (**Canon 1671**).

Chapter I

OF THE SEQUESTRATION OF GOODS AND THE INJUNCTION OF THE EXERCISE OF RIGHTS

1641. If a person has shown that he has some right over a thing retained by another, and that he is threatened with damage unless the thing is given into the custody of a third person, he has a right to obtain from the judge the sequestration of that object. In similar circumstances one can get from the court an order enjoining somebody from the exercise of a right. The sequestration of a thing and prohibition to exercise a right can be decreed by the judge *ex officio,* especially at the instance of the prosecutor or the *defensor vinculi,* whenever the public welfare seems to require it (**Canon 1672**).

1642. Sequestration of a thing is admitted also for the sake of furnishing security for the creditor, provided such claim is absolutely certain, and that the rule of Canon 1923, is observed (the property is to be taken from the debtor with the least possible damage to him, and those things shall be spared which are necessary for his food or his trade). The sequestration may extend even to goods of the debtor which are in the possession of others, either as a deposit or under any other title

(**Canon 1673**). Sequestration of goods and the suspension of the exercise of a right cannot be decreed if the loss which is feared can be repaired in other ways, and proper security to repair it is offered (**Canon 1674**).

1643. The custody of the property subjected to sequestration is to be committed to a reliable person to be designated by the judge at the proposal of the parties; such person is called the *sequester*. If the parties do not agree on the *sequester*, the judge shall *ex officio* appoint one. The *sequester* (or receiver) must use the same diligence in the custody, care and preservation of the property as in connection with his own goods, and he must afterwards give the property entrusted to him to the person in whose favor the judge has ruled, and with the property he must deliver any interest, increase or fruit of the property during his custody of the same. The judge may decree a proper remuneration to the *sequester* at his request (**Canon 1675**).

Chapter II

OF ACTIONS TO HALT NEW ENTERPRISES AND TO OBTAIN SECURITY AGAINST DANGER TO ONE'S PROPERTY

1644. One who fears that he may incur damage through some new work or enterprise may denounce it to the judge and ask that it may be interrupted until the rights of both parties have been defined by the sentence of the judge. As soon as this prohibition has been made known to the other party, he must at once stop work, but he may obtain permission from the judge to continue, provided he gives sufficient security to restore everything to the former condition if he should lose in the trial. The party who denounces a new enterprise has two months within which he must prove his right to stop the work; this time may be either prolonged or shortened by the judge for a good and necessary cause, after hearing the other party (**Canon 1676**). If an old work is being largely changed, the law is the same as stated in Canon 1676 about a new work (**Canon 1677**).

1645. Any person who fears grave damage to his property from a building belonging to another which threatens to collapse, or from a tree or from anything whatsoever, has the right to institute the action *de damno infecto* to obtain either the removal of the danger or security that the damage will be

averted, or if it should perhaps arise, be compensated for (**Canon 1678**).

The remedies which Canons 1676–1678 grant are some of the cases in which the Roman Law afforded relief by "interdict." In the law of England and the United States the remedy is called an "injunction." "An injunction is a judicial order operating *in personam*, requiring a party to do or to abstain from doing some particular act" (Eaton, "Equity Jurisprudence," n. 278). The issuance of injunctions pertains to the courts of equity. In many states of the United States special courts of equity have been abolished, and the courts of law have jurisdiction to proceed either in law or in equity as the nature of the case may demand. The injunction is issued either in the form of an order to do a certain act (called "mandatory injunction") or in the form of a prohibition to refrain from certain actions (called "preventive injunction"). Formerly it was not certain in the civil law whether a court could issue an injunction to perform a positive act, for the very name of the remedy indicates its negative character, but "it seems well established at the present time that a court of equity may compel by injunction the performance of a positive act" (Eaton, "Equity Jurisprudence," n. 281).

In the law of the United States one may not petition the court for an injunction unless one can prove: (1) that one has no plain, adequate and complete remedy at law; (2) that an irreparable injury will result unless the relief is granted. To authorize the remedy by injunction, it is not sufficient that a violation of a palpable legal right of property is threatened, but it is necessary in addition to show that the action at law does not afford full and complete relief. Wherefore, it is essential to prove that, if one waits until the other has done the threatened injury, payment of damages alone would never completely indemnify the injured party. An injunction may be obtained under certain conditions: (1) against proceedings at law, even against a sentence; (2) to prevent a breach of contract; (3) to prevent torts; (4) to prevent breach of trust, and violation of equitable rights; (5) to restrain collection of illegal taxes; (6) to prevent public officers and municipal corporations (cities, towns, villages) from violations of law to the detriment of the public interests or property rights of individuals.

Canon Law employs the injunction in its courts, not only in the cases mentioned in Canons 1676–1678 (i.e., the erection of new buildings or notable alterations of old ones to the prejudice of third parties, and injury threatened to one's land or house by the dilapidated condition of a neighboring house or danger from old and tottering trees or any other object that endangers the adjacent property), but also in other cases. Canons 1672–1675 speak of sequestration and inhibition, which are injunctions employed when personal property and rights are in dispute. In these cases no injunction is granted unless one can prove that the threatened injury could not be repaired in any other way (cfr. Canon 1674), which is, as we saw, one of the essential conditions for obtaining an injunction under the civil law. The restitution into the former position (cfr. Canons 1687–1689) and the action for the rescission of acts or contracts (cfr. Canons 1684–1686) have the same purpose as the injunction, namely, to provide an equitable remedy against undue hardship where in strict law there would be no redress. The restitution can be granted also against a judicial sentence under the conditions of Canon 1905. Against the official acts of ecclesiastical superiors in matters subject to their administrative authority there is no injunction granted, nor any action in court, but merely recourse to the higher superior. Similarly, in the civil law of the United States, no right of action is given to private individuals against the government for damages inflicted in the performance of purely governmental duties. "In order to insure the due administration of government, it is necessary that the officers who are charged with the various duties of making, interpreting, and administrating the laws should enjoy a due measure of immunity from being called to account for their public acts at the instance of private parties. Misgovernment is to be remedied at the ballot box, not by suits at law" (Black, "American Constitutional Law," n. 9).

Chapter III

OF ACTIONS ARISING FROM THE NULLITY OF ACTS

1646. If an act or contract is invalid by law, the party concerned has a right to sue in court for the declaration of its nullity (**Canon 1679**). An act is null and void only when either

the essential constituents of the act are wanting, or some formalities or conditions are lacking which the Sacred Canons require under pain of nullity. The nullity of an act does not make null and void the acts which precede or follow, and which do not depend on the invalid act (**Canon 1680**). If the acts preceding or following an invalid act are part of the same transaction so that there is a necessary connection, the invalidity of the principal act entails the invalidity of the accessory acts, since they share in the fate of the principal act. If these other acts are only accidentally connected with the invalid act, but do not depend on it, they are not invalidated by the nullity of the one act. For example, if, after the legitimate suspension of a priest, the bishop forces him to resign his parish, and then gives the parish to another priest: the appointment of the new pastor is invalid because it depends on the invalid resignation (cfr. Canon 185), but the suspension holds, supposing that it was legitimately imposed, for it does not depend on another invalid act.[9]

1647. The person who has performed an invalid act is liable for the damages and expenses of the injured party (**Canon 1681**).

The nullity of an act cannot be declared by the judge *ex officio* unless it is in the interest of the public, or in favor of the poor, or minors, or others who enjoy the protection which law gives to minors (**Canon 1682**).

1648. No inferior judge can review the validity of the confirmation given by the Roman Pontiff to an act or instrument, unless he has first obtained a mandate from the Apostolic See (**Canon 1683**).[9a]

The confirmation by the Roman Pontiff here spoken of means a confirmation of acts or instruments in the so-called *forma specifica*. There are two ways in which the Roman Pontiff may confirm acts of others—e.g., the Decrees of a Plenary Council (i.e., of the hierarchy of a whole nation)—*in forma communi* and *in forma specifica*. The confirmation *in forma communi* does not change the nature of the act or instrument confirmed, which does not become an act or document of the Supreme Pontiff, and, if the act or document is invalid, it remains invalid notwithstanding the confirmation of the Roman Pontiff. The

[9] Eichmann, "Prozessrecht des Cod. Jur. Can.," 113.
[9a] Cfr. App. III, 73.

confirmation *in forma specifica,* however, raises the act or document thus confirmed to the state of a papal act or document by appropriation, and all defects of the original act or instrument are healed. The law of Canon 1683 is a repetition of the law of the Decretals of Pope Gregory IX (c. 2, *De confirmatione utili vel inutili,* lib. II, tit. 30), and must therefore be interpreted in accordance with the common and accepted interpretation of the former law. That interpretation is to the effect that only the confirmation *in forma specifica* by the Roman Pontiff bars inferior judges from passing sentence on the validity or invalidity of acts and instruments. The confirmation of Canon 1683 means a confirmation by the Supreme Pontiff himself, not by any Roman Congregation or Office unless they gave the confirmation by special delegation of the Supreme Pontiff. The precept of Canon 1683 that acts and instruments which have become papal acts by the confirmation (*in forma specifica*) cannot be judged by a lower court except with the special permission of the Apostolic See, means that the permission of the Supreme Pontiff himself is required, for the Sacred Congregations and Roman Tribunals have no authority to judge acts of the Roman Pontiff.

Chapter IV

OF RESCISSORY ACTIONS AND THE *RESTITUTIO IN INTEGRUM*

1649. A person who, under the influence of grave fear unjustly inflicted or misled by deceit, has committed an act or made a contract which is not automatically void in law, may obtain a rescission of the act or contract by the so-called rescissory action. The same action may be brought within two years by a person who has suffered grave damage, losing through error over one-half the amount of the contract (**Canon 1684**).

1650. This action can be brought:

(1) against him who caused the fear or practised the deceit, though he did not do so for his own advantage, but to benefit another;

(2) against every possessor in bad faith, and even against a possessor in good faith, if he possesses goods which were extorted through fear or deceit; the possessor in good faith has the right to sue the person from whom he got the goods and

other previous possessors, including the author of the fear or the deceit (**Canon 1685**).

If he who caused the fear or practised the deceit sues for the execution of an act or contract, the injured or deceived party has the right to cite the exception of fear or deceit (**Canon 1686**).

1651. Minors and other persons who enjoy the privilege of minors, when gravely injured, as well as their heirs and successors, may in addition to the ordinary means of getting redress apply to the court for the extraordinary relief of the *restitutio in integrum* (reinstatement in the previous condition), if they were injured in an affair or valid act which can be rescinded. The benefit of the action for *restitutio in integrum* can be granted also to adults who cannot resort to the action for rescission or any other ordinary remedy (e.g., because the time for bringing the action for rescission has expired, or the right of action has been forfeited through lapse of time), provided that they prove that they have a just cause to ask for this remedy, and that the injury they have suffered was not imputable to them (**Canon 1687**).

1652. The *restitutio in integrum* must be asked from the ordinary judge who is competent with respect to the person against whom the petition is entered. In the case of minors, the petition must be made within four years after attaining their majority; in the case of majors or legal persons, within four years after suffering the injury or after the cessation of the impediment which prevented action. Minors and persons enjoying the privilege of minors may be granted *restitutio in integrum* by the judge even *ex officio*, after consultation with or at the instance of the promoter of justice (**Canon 1688**). The effect of the *restitutio in integrum* is that all things are put in the same position as they were before the damage was inflicted, except that rights acquired by others in good faith before the petition for reinstatement remain undisturbed (**Canon 1689**). As the *bona fide* possessor is protected in law, even the reinstatement proceedings do not affect his rights: for example, if an administrator of a church had sold some goods of the church (e.g., the fruits or other produce of the land) and made a bad bargain, and a third person had in good faith bought them from the first purchaser before the administrator petitioned for

a *restitutio in integrum*, the third person cannot be molested, though the court can force the first purchaser to pay a fair price. If the agreement was made through fear or deceit, even a third party who acquired possession in good faith can be forced by the court to part with the goods thus acquired (cfr. Canon 1685).

Chapter V

OF ACTIONS AND COUNTER-ACTIONS

1653. An action which the defendant brings against the plaintiff before the same judge and in the same trial for the purpose of defeating or diminishing the claim of the plaintiff is called *reconventio* (a counter-claim or cross-suit). A counter-suit against a counter-suit is not admitted (**Canon 1690**). Both Canon and civil law allow counter-suits to simplify litigation and settle two cases in one trial. Thus, if one man claims that another owes him one hundred dollars for work performed or services rendered, and the latter has an unpaid claim for one hundred dollars or more against the plaintiff for goods bought and delivered, both claims can be settled in the same trial. In the civil law there are many and intricate rules concerning counter-actions, set-off and recoupment. The Code has only the following few rules on the subject.

1654. The counter-action may be brought in all civil trials with the exception of cases of spoliation. In criminal trials the counter-action is not admitted except in the case cited in Canon 2218, § 3 (**Canon 1691**).

1655. The counter-action must be proposed to the judge who tries the principal action, though he is delegated for one case only and though he would be incompetent to try the case of the counter-action if it were brought independently of the principal case; if, however, the incompetency of the judge over the matter of the counter-action is absolute (cfr. Canons 1556–1558 on absolute incompetency of diocesan courts), he cannot admit the counter-action in the trial (**Canon 1692**).

Chapter VI

OF POSSESSORY ACTIONS OR REMEDIES

1656. A person who has a legitimate title to obtain the possession of a certain thing, or the exercise of a certain right,

may petition the court that he be granted the possession of such thing or the exercise of such right (**Canon 1693**). Not only possession, but even the simple holding of goods or rights, entitles one, according to the following Canons, to a possessory action or exception (**Canon 1694**).

1657. A person who has remained for a full year in possession of a thing or in quasi-possession of a right, may take an action for the retaining of possession (*retinendæ possessionis*), if he is molested in the possession or quasi-possession. This action against the person who molests him in his possession or quasi-possession may be brought only within one year from the time he was first molested (**Canon 1695**).

1658. The action for the retaining of possession may be brought by all persons who have actual possession, though it was obtained by force, or stealth, or is held precariously (*precario*); it can be brought against any disturber of his possession except the person from whom the possessor took it by force or stealth, or who gave him precarious possession. In cases which concern the public weal, the prosecutor has the right to raise the objection of faulty possession against one who holds possession through force, stealth, or precariously (**Canon 1696**).

The phrase *precario accepit* means that one has obtained permission to hold or use the thing at the good pleasure of the owner, without legal right or title to the possession as against the lender, who may thus at any time demand the return of the thing. Against persons other than the real owner this kind of possession does give rights, for nobody other than the owner can disturb the holder in his possession. Precarious possession thus means possession in the name of and at the pleasure of the owner.

The distinction between ownership (title) and possession of things becomes very important in lawsuits. Frequently the owner and possessor is one and the same person, but they may be different persons, and in that event owner and possessor have distinct rights. When the Code (in Canons 1693–1700) treats of possessory actions, it considers merely the legal rights accruing from possession, irrespective of ownership. Possession may be based on a legal right (the *titulus legitimus* of Canon 1693), or it may be based merely on the fact of possession (the actual retention spoken of in Canon 1696). Possession is protected in

law to the extent that even a person who obtained possession by stealth, or by force, or by kindness of the lender, may institute a lawsuit for the retaining of possession (if he is molested) against all persons except those from whom he stole, seized or holds the thing (cfr. Canon 1696).

1659. If a controversy arises as to which of two men is the possessor, that one is to be preferred who within the last year exercised the more frequent and important acts of possession. If that remains doubtful, the judge should attribute to both joint and undivided possession. If that is not possible because of the nature of the object or the right, or because of the danger of disputes and quarrels, the judge shall order that possession be held by a *sequester,* or that the quasi-possession of a right be suspended, until the petitory action is decided (**Canon 1697**).

1660. A person who has been deprived of possession of an object or quasi-possession of a right in any manner by force or stealth, has a right to bring an action to regain possession (*recuperandæ possessionis*), or an action *de spolio,* or an exception *de spolio,* against the author of the spoliation or against the detainer of the thing. This action is not admitted after the lapse of one year from the time when the party deprived of the possession had notice of the deprivation; the exception *de spolio,* however, is perpetual (**Canon 1698**). The law demands that one be alert to one's rights and act promptly when others interfere with them. Wherefore, if one had notice of the deprivation of one's possession or right and did not act within one year, the law will not admit one to bring action. If one should succeed in regaining possession by one's own efforts, by force or in any other way, and then is sued by the one who had possession, he can raise the exception *de spolio,* asserting that he had a right to the possession because he had been illegally deprived of it; this exception may be urged by the first possessor at any time.

1661. If the person who was deprived of possession is sued by the one who deprived him, he may cite the exception of spoliation, and, once he has proved the spoliation, he is not bound to make any further answer in the case until he has first been put into possession. The one who was deprived of possession need not prove anything else than the spoliation itself in order to regain possession (**Canon 1699,** §§ 1–2). For example, he need not prove that the object or property is his own,

or that he has paid the rent, etc., to be entitled to possession. Here Canon 1696 must be considered, which does not allow one who has obtained possession through force or stealth, or who holds precarious possession, to plead his possession against the man from whom he robbed or stole or gratuitously borrowed some goods or property. Thus, if a person out of charity allows another to occupy a house or land, and, when he later on wants that person to move, the latter refuses and forces the landlord to put him out by force, the one forcibly removed cannot bring an action of spoliation, or cite an exception *de spolio*.

Though the person deprived of possession when brought to court has the right to be reinstated in possession before the case proceeds, still the judge may at the instance of the other party or of the prosecutor decree that the reinstatement into the former condition be suspended, or that the object or person be in the custody of a *sequester* until the end of the trial of the case, if there is danger in the restitution of an object or of a right—e.g., danger of cruel treatment if the man demand against his wife the resumption of conjugal relations (**Canon 1699**, § 3).

1662. Possessory trials are to be conducted by summoning only the adverse party, if the trial is instituted for the purpose of retaining or regaining possession; if there is question of the acquisition of possession (which the plaintiff never had) all who are interested in the matter must be summoned (**Canon 1700**).

Chapter VII

OF THE EXTINGUISHMENT OF ACTIONS

1663. In civil cases both real and personal actions are extinguished by prescription according to the rules of Canons 1508–1512; actions, however, which deal with the state of persons (e.g., validity of religious profession, of sacred orders, or marriage), never become extinguished (**Canon 1701**).

The limitation of actions in civil cases is governed by the laws on prescription, and one of these laws of the Code (Canon 1508) rules that the laws of the respective nation are to be applied also with reference to ecclesiastical goods with a few exceptions enumerated in Canons 1509–1511. The statute of limitations (i.e., loss of right to bring suit for the enforcement of one's rights) varies in the various States of the American

Union both as to real estate and personal property. As to real estate, a long period of time is required (e.g., twenty years in the State of New York). The cases from the various states "all agree that, in order to perfect title by adverse possession, the possession must be actual, for a part of the land at least; that it must be visible or notorious; that it must be hostile or adverse; that it must be exclusive; that it must be continued for the whole period required to bar an action for recovery under the statute of limitations. In some states, it is also necessary, by statute, that the adverse possessor should hold under color of title, and some statutes require that he must pay taxes during the running of the statute of limitations. Some states also hold that title by adverse possession cannot be acquired unless the occupant enters and holds possession in good faith" (Burdick, "Real Property," ed. 1914, 631).

With reference to personal property, the laws of the various states of the American Union do not recognize the civil law doctrine of the Roman and Canon Law on prescription. The American law—and the same applies to English law—does not extinguish the right of the other party and transfer title of the personal property to the one in whose favor the prescription has run (the debtor), but merely takes away the remedy (i.e., the right to institute action in court after the claim is barred by the lapse of the statutory period of limitations). "The length of time after which the statute of limitations becomes a defence varies largely in the different jurisdictions (states), and the student must consult the statutes of his own state. The period for one class of claims may not be the same as that for another class. Thus the period usually is shorter for oral and implied contracts than for written ones; for a written contract not under seal than for one under seal or a specialty; for a contract not attested than for one which is witnessed; and for a contract than for a judgment" (Childs, "Personal Property," ed. 1914, 410). In the State of New York, for instance, a right of action on a contract (except a judgment or sealed instrument), an action to recover damages for an injury to property or a personal injury, to recover a chattel, to procure a judgment on account of fraud, or to establish a will, must be begun within six years after the cause of action has accrued; an action to recover damages for libel, slander, assault, battery, seduction, criminal con-

versation, false imprisonment, malicious prosecution, or malpractice, must be begun within two years after the cause of action has accrued.

1664. Every criminal action expires with the death of the guilty person, or by condonation granted by the legitimate authority, or by the lapse of time fixed by the law for the bringing of criminal actions (**Canon 1702**). The time limits for the prosecution of offenders vary according to the different offenses, as stated in Canon 1703.

In the prosecution of offenses which are reserved to the judgment of the Sacred Congregation of the Holy Office (e.g., heresy, solicitation, absolution of one's accomplice in sins of impurity), the ordinary time limits for prosecution do not apply; the Holy Office follows its own rules. In other offenses the guilty person can be prosecuted only within three years from the commission of the offense, with the following exceptions:

(1) Actions for injuries (e.g., defamation, insult, striking, wounding) are extinguished by the lapse of one year;

(2) Actions for qualified offenses against the sixth and seventh commandments are extinguished by a lapse of five years;

(3) Actions for simony and for homicide are extinguished by a lapse of ten years (**Canon 1703**).

1665. The term "qualified offenses" against the sixth and seventh commandments is not explained in the Code, but it is interpreted by canonists to mean crimes against the sixth or the seventh commandment with which in the same act another crime is committed (e.g., in rape the violence done to another, in theft from a church the sacrilege, etc.).[10] It is desirable to know exactly what crimes are meant, because the prescription of actions in the case of ordinary offenses against the two commandments, as in other crimes, bars prosecution after the lapse of three years. Eichmann seems to understand by "delicta qualificata contra VI et VII divinum præceptum" the offenses enumerated in Canons 2357, 2359, § 2, and 2354.[11] Canon 1703 is largely taken from a Decree of the Sacred Congregation of Bishops and Regulars, March 22, 1898,[12] which enumerates the crimes for which twenty years are required before the prosecution is barred by

[10] Noval, "De Processibus," 275; Vermeersch-Creusen, "Epitome," III, n. 138.

[11] *Prozessrecht des Cod. Jur. Can.*, 110.

[12] *Acta S. Sedis*, XXX, 688.

prescription, and enumerates other crimes for which prosecution can be instituted at any time during the life of the offender, but the term "delicta qualificata" is not employed in that decree. The opinion of Eichmann has this in its favor, that the offenses which are to be considered "delicta qualificata" are determined, if the term is understood to apply to the offenses of Canons 2357, 2359, § 2, and 2354, and no others.

The periods of time mentioned in the prescription of actions for crimes is called *tempus utile* to indicate that the prescription does not run if the prosecutor was ignorant of the crime or was not able to act against the offender (cfr. Canon 35).

1666. The Code does not speak of the prescription of penalties. Canon 2240 states that, for the prescription of a penal action, the same rules hold which are given in Canon 1703 on the prescription of crimes.

There is some difficulty in harmonizing the law on the prescription of criminal actions with those Canons in which the law itself inflicts the penalty for an offense either in the form of *ferendæ* or *latæ sententiæ*. First, with reference to the penalties *ferendæ sententiæ* it may be said that, though the law does inflict the penalty, that penalty does not bind the offender by the mere commission of the offense, but only after the competent judge has issued the condemnatory sentence. If the prosecutor neglects within the period of prescription to obtain the decree of execution (cfr. Canon 1918), and to do what is in his power to execute the decree, the penalty becomes extinct with the lapse of the prescribed period of limitation of criminal actions. If the prosecutor was unable to prosecute or to obtain the execution (e.g., because the offender fled from the territory of jurisdiction of the court, hid himself, etc.), the period of prescription or limitation of the criminal action is suspended, and suit can be begun, or execution of the penalty can be urged, even after the lapse of the period of limitation. Secondly, with reference to the penalties *latæ sententiæ,* the law of prescription or limitation of criminal actions does not apply, because in virtue of the precept of Canon 2232 every penalty *latæ sententiæ,* whether medicinal (censures) or vindicative (all other penalties except censures), binds the offender automatically in both the internal and the external forum. The only mitigation conceded by law with reference to the *latæ sententiæ* penalties by Canon 2232

is that the offender is excused from execution of the penalty on himself until a declaratory sentence has been issued against him, if he cannot comply with the penalty without defaming himself, and provided that his offense was not notorious; consequently, nobody can demand of him to conform to the penalty in the external forum, unless the offense was notorious. It seems to follow from Canon 2232 that, if the prosecutor does not insist on the issuance of the declaratory sentence or on its execution before the period of limitation has expired, he cannot afterwards urge the execution of the penalty in the external forum, when the offense was not notorious (cfr. Vermeersch-Creusen, "Epitome," III, n. 139; Noval, "De processibus," n. 274, who denies that there can be any prescription of action in *latæ sententiæ* penalties). Notwithstanding the prescription of the criminal action, Canon 2222 rules that the legitimate superior has not only the right but the duty to refuse to ordain a cleric whose worthiness is not certain, and he can, for the sake of avoiding scandal, forbid a cleric the exercise of the sacred ministry, or remove him from office, with the observance of the prescribed formalities. His action in this case is not to be considered to have the nature of a penalty.

1667. If the criminal action against a person is barred by prescription, the civil action for damages caused by the offense is not thereby barred. Furthermore, the fact that a criminal action is barred by lapse of time does not prevent the Ordinary from employing the remedies mentioned in Canon 2222, § 2 (**Canon 1704**). The prescription of civil actions is regulated by Canons 1508–1512, which rules apply also to the barring of actions for damages caused by crimes.

1668. The prescription in civil cases runs from the moment at which the action could legitimately have been brought; in criminal cases from the moment of the perpetration of the offense. If the offense extends or continues for some length of time, prescription begins to run only from the day on which one desisted from the criminal course. In habitual or continued offenses, the prescription does not begin to run until after the last act of the criminal conduct. When a person is prosecuted for some criminal act against which prescription has not yet barred the action, he is liable for the older offenses which are connected with the criminal act for which he is prosecuted,

though prosecution for those older offenses taken individually would be barred by prescription (**Canon 1705**).

TITLE VI

OF THE INTRODUCTION OF A CASE

Chapter I

OF THE BILL OF COMPLAINT

1669. To open a suit, the plaintiff must present to the competent judge a bill of complaint in which the object of the controversy is exposed, and the service of the judge is implored for the obtaining of the rights which he claims (**Canon 1706**). If the plaintiff does not know how to write, or is legitimately impeded from presenting a written complaint, he may make an oral petition in court. In cases which are easier to investigate and which are of minor importance, and therefore to be decided without delay, it is also left to the discretion of the judge whether he wishes to accept an oral petition. In both cases, however, the judge shall order a notary to take down the complaint in writing, which document is to be read to the plaintiff and approved by him (**Canon 1707**).

1670. The bill of complaint (*libellum litis*) by which the case is brought to court must contain the following points:

(1) it must state the name of the judge before whom the case is brought, the object of the petition, and the name of the defendant;

(2) it must indicate, at least in general, the arguments on which the plaintiff relies to prove his allegations and his title to redress;

(3) it must be subscribed by the plaintiff or his proxy, give the day, month and year, the place of residence of the plaintiff or his proxy, or an address at which the plaintiff or his proxy wish to receive communications from the court (**Canon 1708**).

The term *libellum litis* is taken from the Roman Law. Under the Common Law a case was introduced by a *declaration;* under the Code Law of the United States (in so far as the individual states have a Code), it is usually called the *complaint,* although a few states call it the *petition.* Besides the formal parts of the bill of complaint (e.g., name of the judge, name of the

defendant, signature of the plaintiff, date and place of residence of plaintiff), the statement of the facts which show the right of the plaintiff to redress through the ministry of the court and a precise statement of claim against the defendant must be contained in the bill of complaint.

1671. After investigating its competency and the right of the plaintiff to sue (for the law deprives certain persons of the right to act as plaintiffs in court), the judge or court must as soon as possible either admit or reject the bill of complaint, giving in the latter case the reasons for so doing. If the decree of the judge rejecting the complaint bases its refusal on faults of the complaint which can be amended, the plaintiff can offer to the same judge a properly amended bill of complaint; if the judge rejects the amended bill of complaint, he must explain the reasons for the new refusal. The party is at liberty to have recourse to the higher court within ten days against the rejection of the bill of complaint. The higher court shall give a hearing to the party and the prosecutor (or the *defensor vinculi*), and shall hand down a prompt ruling on the question of the rejection (**Canon 1709**). The ten days within which the plaintiff may have recourse to the higher court are called *tempus utile* to indicate that the recourse is not barred if through ignorance or impossibility to act the ten days passed before recourse was taken (cfr. Canon 35).

1672. If, within one month from the presentation of the bill of complaint, the judge has not issued his decree admitting or rejecting the same (as stated in Canon 1709), the party interested may insist that the judge issue the decree. If the judge is nevertheless silent, the party may, on the lapse of five days after his petition to the judge to take action, have recourse to the local Ordinary—if he does not act as judge in the case —or to the higher court to petition that the judge be forced to take action, or that another be appointed in his place to try the action (**Canon 1710**). The period of one month within which the judge must admit or reject the bill of complaint is called *mensis continuus* to indicate that no interruption of this interval is tolerated (cfr. Canon 35). It seems that, if the bishop himself is the judge in the case and refuses to act (as stated in this Canon), the higher court to which the party can have recourse is the Holy See, for Canon 1625, § 1, rules that if a judge who

is evidently competent refuses to try the case, he is to be forced by the local Ordinary, or, in the case of a bishop, by the Holy See.[13] However, Canon 1625 speaks of an action to obtain damages and of an action for punishment of the bishop, and, while the recourse of the plaintiff to the higher court (archbishop's court) against the adverse ruling of the bishop on the question of introducing a lawsuit is of the nature of an appeal against the judicial acts of the bishop, there seems to be no reason why the recourse cannot be taken to the ordinary court of appeals.

Chapter II

OF THE SUMMONS AND THE NOTIFICATIONS OF JUDICIAL ACTS

1673. The bill of complaint or the oral petition having been admitted, the other party must be summoned to appear in court. The summons issued by a court to the defendant is called the *vocatio in jus.* If the contending parties appear before the judge of their own accord to plead their case, it is not necessary to issue the summons, but the secretary or clerk of the court shall make a note in the acts of the case that the parties came to court of their own accord (**Canon 1711**).

1674. The summons is to be issued by the judge, and is to be written on the bill of complaint or joined to it. It is to be sent to the defendant, and, if there are several defendants, to each one. The plaintiff, moreover, must be notified by the court to appear on a specified day and at a fixed hour before the judge (**Canon 1712**).

If the defendant is a person who does not have the free administration of the goods concerned in the controversy, the summons must be presented to that person who in his name must answer in the trial, according to the rules of Canons 1648–1654 (**Canon 1713**).

1675. Every summons is peremptory, and need not be repeated, except in the case mentioned in Canon 1845, § 2—namely, when the judge wants to punish for contempt of court a party who ignores the first summons (**Canon 1714**).

1676. The summons is to be presented to the party in a written form, which shall express the precept of the judge to

[13] Noval, "De Processibus," n. 391.

the party to appear. It shall state the name of the judge who issues it, indicate at least in general terms the reason why the party is summoned, give the correct name and surname of the defendant, and state by whom he is sued; the place and time (i.e., the year, month, day and hour), where and when he is to appear, must be clearly indicated. The summons authenticated with the seal of the court must be subscribed by the judge or by his auditor and a notary (**Canon 1715**). The summons is to be made in duplicate, one copy being presented to the defendant and the other inserted into the acts of the case (**Canon 1716**).

1677. The written summons is to be handed to the defendant personally by a messenger of the Curia wheresoever he finds him, if this manner of serving the summons is possible. The messenger may for this purpose enter the territory of another diocese, if the judge thinks it advisable and orders the messenger to do so. If the messenger does not find the person to be summoned in the place where he stays, he can leave the written summons with some person of the family or with a servant of the defendant, if that person is willing to accept the summons and promises to give the summons to the defendant as soon as possible; otherwise, the messenger shall take it back to the judge in order that he may dispatch it in the manner provided in Canons 1719 and 1720 (**Canon 1717**). If the defendant refuses to accept the written summons, he is to be considered legitimately summoned (**Canon 1718**).

1678. If for reason of distance or other cause it is difficult to have the summons delivered to the defendant by messenger, the judge can order it to be transmitted by registered mail and a signed receipt obtained, or in any other manner which according to the laws and conditions of the respective country is considered safest (**Canon 1719**).

1679. Whenever after diligent inquiry it cannot be ascertained where the defendant stays, the summons by edict or public announcement can take place. This is done by having the messenger post the document of the summons at the doors of the Curia in the manner of a public notice, which is to be left there for a length of time to be specified by the judge, and by inserting the summons in some public paper. If both cannot be done, either manner of public notice suffices (**Canon 1720**).

1680. When the messenger leaves the written summons in

the hands of the defendant, he must sign it marking the date and the hour at which he handed it to the defendant. He shall act in the same manner when he leaves the summons with a member of the family or a servant of the defendant, adding also the name of the person with whom he leaves the summons. If the summons is made by public notice, the messenger shall at the bottom of the notice mark the day and hour at which he posted the paper at the door of the Curia and how long it remained posted. If the defendant refuses to accept the summons offered to him by the messenger, the latter shall mark the day and hour, sign the summons and return it to the judge (**Canon 1721**).

The messenger shall make a written report of his work (in serving the summons) to the judge, and add his signature to the report, which is to be inserted in the acts of the case. If the summons was served by mail, the receipt shall be inserted in the acts (**Canon 1722**).

1681. If the summons does not contain the points enumerated in Canon 1715, or was not legitimately served, both the summons and the acts of the procedure are null and void (**Canon 1723**).

It is important that the summons contain the name of the defendant who is to appear in court in such a manner that there can be no mistake as to the identity of the person summoned. In the case of Froberger v. Editors (*Redaktion*) of *Petrusblätter* (at Treves) for libel committed by the periodical, the bishop's court summoned the editors (*Redaktion*). In the appeal the Sacred Roman Rota decided that the summons were null and void, because not directed to a specified person (May 15, 1913; *Acta Ap. Sedis,* V, 286). If legal persons or bodies are to be summoned, the summoning of the administrators or directors generally suffices (Sacred Roman Rota, May 15, 1913; *Acta Ap. Sedis,* V, 285). If the summons does not state the precise time when the person summoned is to appear in court, the summons is invalid, but, if the person nevertheless appears in court, the trial is valid (Sacred Roman Rota, July 13, 1918; *Acta Ap. Sedis,* XI, 395).

1682. The rules stated above for the summoning of the defendant shall be observed also in the other judicial acts, after they have been adapted to the diverse nature of the acts—for example, in notifying the parties concerned of the orders and

sentences of the judge, in summoning witnesses, and the like (**Canon 1724**).

1683. When the defendant has been legitimately summoned, or the parties have of their own accord appeared in court, such act has the following effects:

(1) the case ceases to be *a res integra* (i.e., the case is before the court, and the matter involved in the case is no longer a private affair, but one in which the public authority is interested);

(2) the case becomes proper to the judge or the court where the action has begun (e.g., if the plaintiff had the choice between the courts of the dioceses of A and X, the fact that the diocesan court of X, after complaint of the plaintiff, issued the summons to the defendant excludes any other court from judging the case in the first instance);

(3) the jurisdiction of a delegated judge is rendered firm, so that it does not expire with the loss of jurisdiction of the one who delegated him;

(4) prescription is interrupted, because from the moment property or rights are made a subject of litigation, the good faith essential to prescription ceases;

(5) the case begins to be pending, wherefore immediately the principle of law applies that pending the litigation nothing may be changed (**Canon 1725**). No change may thenceforth be made either in the complaint of the plaintiff, or in the allegations of his reasons for asking redress, or in the property or rights about which the litigation turns.

TITLE VII

OF THE *CONTESTATIO LITIS*

1684. The object or matter of the trial is fixed by the *contestatio litis* (the joining of issues), which consists in the formal denial by the defendant of the claim of the plaintiff made with the intention of litigating the case before the judge (**Canon 1726**). No formalities are required for the joining of issues; it suffices that the parties appear before the judge or his delegate, and that the complaint or petition of the plaintiff and the

denial of the defendant, whereby the matter in dispute and the points of the controversy are clearly determined, are inserted into the acts of the case (**Canon 1727**).

1685. In more complicated cases, however, when the complaint of the plaintiff is neither clear nor simple or in which the answer of the defendant abounds with difficulties, the judge should either *ex officio* or at the instance of either party summon the parties to court for the purpose of specifying the paragraphs or counts (*dubia*), so that the issues over which the two parties litigate may be determined (**Canon 1728**). The entire trial is based on the complaint of the plaintiff and the answer of the defendant, and everything extraneous to the points raised in the joining of issues is to be excluded from the trial.

What is called in Canon 1728 *dubia concordanda,* corresponds to the common-law joining of issues. "The issues are ascertained by requiring the alternate pleadings of plaintiff and defendant to be so constructed as to finally present some point distinctly affirmed on one side and distinctly denied on the other. When the point in controversy has in this way been ascertained, the pleadings are ended, and the parties are, in legal parlance, said to be at issue" (Phillips, "Principles of Pleading," n. 48). The *concordatio dubiorum,* or formal pleading in an action, has the following three purposes: (1) to show to the court that there is, *prima facie,* occasion for judicial interposition; (2) to disclose and formulate any resulting contention *inter partes;* (3) to predefine the nature and scope of the trial. To promote the second of these purposes and facilitate the production of an issue, all traversable (deniable) facts are required to be stated issuably—that is, in such a direct and positive form that the adverse party may traverse (deny) them. Pleadings must not be by way of recital, but must be direct and positive in form. In a complaint for assault and battery, the allegation should be that "the defendant made an assault" —not, "whereas the defendant made an assault." The latter statement asserts nothing, and a denial of it will not make an issue. An alternative, or a hypothetical statement, is equally objectionable. An allegation that the defendant wrote and published, *or* caused to be written and published, a certain libel, does not positively charge the doing of either; and the statement that, *if* the plaintiff is the owner of a certain note, it was

obtained by fraud, does not positively allege fraud (cfr. Phillips, "Principles of Pleading," nn. 356–357).

1686. If on the day appointed by the court for the joining of issues, a party, though properly summoned, does not appear, nor give a just excuse for absenting himself, he shall be declared guilty of contempt of court, and the formulation of the counts shall be fixed by the judge *ex officio* at the request of the party who appeared. The party guilty of contempt of court shall immediately be notified by the court of the fixing of the counts in order that he may within the time allowed at the discretion of the judge make exceptions and objections to the counts and justify his absence. If the parties appear and agree on the points or counts about which they intend to litigate, and the judge on his part finds no objection to the issues, he shall so state in the decree by which the form of the issues is fixed. If, however, the parties disagree (e.g., if the defendant claims that the plaintiff has no legal basis for some of the counts, and therefore demurs to their insertion in the case), or if the judge does not approve of the conclusions reached by the parties over controverted points, the judge himself shall by decree settle the disputed point. Once the forms of the points at issue (the so-called counts) have been fixed, they cannot be changed except by a new decree of the judge, which cannot be given except for a grave reason and at the request of one of the parties or of the prosecutor (or *defensor vinculi*); both parties—or, if one party has made the request, the other party—must be heard, and their reasons for objecting must be considered (**Canon 1729**).

1687. Before the joining of issues has taken place, the judge shall not proceed with the examination of witnesses and the admission of other proofs except in the case of contempt of court, or in case it becomes necessary to take the depositions of witnesses lest they die or move away, or when for any other reason it would be difficult to obtain their testimony later on (**Canon 1730**).

1688. The joining of issues has the following effects:

(1) The plaintiff may not change the bill of complaint unless the defendant consents and the judge for good reasons believes that the change should be admitted, but the defendant always has the right to obtain compensation for damages and expenses, if any are due to him. The bill of complaint is not considered

changed, if the manner of proof is shortened or altered; if the claim or secondary claims are reduced; if the circumstances of a fact stated in the bill of complaint are illustrated, completed, or amended in such a way that the object of the controversy remains the same; if, instead of the object itself, the price, or interest, or something equivalent is asked;

(2) the judge shall fix an appropriate interval of time within which the parties must procure and complete the proofs of their case. This interval may be prolonged at the discretion of the judge, if the parties request a postponement, but he must see that the trial is not unduly protracted;

(3) the possessor of the property or rights of another ceases to possess in good faith. Consequently, if the case is decided against him, he must restore not only the thing itself, but also the fruits which the thing has produced since the joining of the issues, and he is, moreover, obliged to repair any damages caused since that moment (**Canon 1731**).

1689. The last paragraph states that the possessor of the property which is made the object of litigation in the bill of complaint and in the joining of the issues, ceases to be a possessor in good faith. Does he become a possessor in bad faith, or a possessor in doubtful faith? The wording of the Code seems to hold him equivalent to a possessor in bad faith, for it makes him liable from the time of the joining of the issues, not only for the interest or profit, but also for damages. Nevertheless, one may reasonably suppose that the Code means to make him liable for damages (loss by fire, theft, etc.) only in case that he failed to take ordinary care to prevent such losses. For the person who was truly a possessor in good faith until the lawsuit started, cannot be said to become a possessor in bad faith by the mere fact that his right is called in question; at most, he may be compared to a possessor in doubtful faith. Besides, he virtually becomes a *sequester* (cfr. Canon 1674), and the *sequester* is required only to take such care of the property entrusted to him as a prudent man would take concerning his own (cfr. Canon 1675, § 2).

TITLE VIII

OF THE INSTANCE OF A SUIT

1690. The instance begins with the joining of the issues; it ends in any of the ways in which a trial may be ended, but it can also be interrupted before, and may be even terminated by abatement (which is defined in Canon 1736) or by renunciation (**Canon 1732**).

Interruption of Lawsuit

1691. If a litigating party dies, or changes his state (e.g., by becoming insane, by incurring excommunication, or by any other circumstance which deprives him of the ability or the right to act in court), or if a party loses the office by reason of which he acted in the case, the following rules obtain:

(1) if the case has not yet been closed, the instance or lawsuit is interrupted until the heir of the deceased or the successor resumes the litigation;

(2) if the case has been closed (*causa conclusa*), the lawsuit is not interrupted, and the judge must continue the procedure, summoning the proxy (if there be one) or otherwise the heir of the deceased or the successor (**Canon 1733**).

Canon 1860 explains what is meant by *causa conclusa:* the closing of the case, in so far as the parties are concerned, takes place when the parties have declared at the inquiry of the judge that they have no more to say in proof or defence of their case, and the judge has issued a written statement that the case is closed.

1692. If there is a controversy between two clerics about the right to a benefice, and one of them dies while the case is pending, or one resigns the benefice, the lawsuit is not interrupted, but the prosecutor (*promotor justitiæ*) conducts the case against the survivor in behalf of the liberty of the benefice or of the church. The prosecutor does not enter the case, if the benefice is one of those which the bishop can freely confer (i.e., without interference of a patron or other person having a right to designate, elect, etc., the incumbent), and if the bishop prefers to give it to the surviving party, as though he had won the case (**Canon 1734**).

If a proxy or a guardian ceases to act for his client, the lawsuit remains interrupted until the party or the persons concerned have appointed a new proxy or guardian, or have declared that they henceforth will continue personally the trial of the case (**Canon 1735**).

Abatement of the Lawsuit

1693. If, without the intervention of any impediment, no procedural act has been done in the court of the first instance for two years or in the court of appeal for one year, the lawsuit abates; in the second case (in court of appeal), the sentence which is contested in the appeal becomes a *res judicata* (cfr. Canon 1902)—that is, an adjudged case from which there is no appeal (**Canon 1736**).

The abatement or discharge of a lawsuit is effective *ipso jure,* and holds good against all litigants, even minors and other persons having the privilege of minors; and if the same matter is again brought to court, the exception of *res judicata* must be raised against it *ex officio,* because the law admits no further litigation about the same matter between the same persons. If a proxy or a guardian has been the cause of the discharge of the lawsuit, the party appointing the proxy (the minor, church, or other legal person, represented by a guardian, administrator, etc.) can sue this person for damages, and he will be forced to pay unless he can prove that he was free from guilt (**Canon 1737**).

1694. The discharge of the action wipes out the acts of the process, but it does not destroy the acts of the cause itself. The latter can have their force in another instance, provided the new trial is between the same persons and over the same matter. As to outsiders, the acts of the case have no other force or effect than of documents (**Canon 1738**).

As the acts of the procedure are wiped out, one can never again attack the sentence for reason of procedural errors (e.g., the competency of the judge, the nullity of acts because of the lack of formalities required under pain of nullity, etc.). The acts of the case remain (e.g., proofs, admissions, denials, etc.), and, if a party after the discharge of the lawsuit gets the favor or a new trial, the acts of the case retain their original force,

if the case is between the same persons and over the same matter. For all other persons except the contending parties, the acts of the case are merely documents: they may use them to prove something in their favor, and can therefore produce them in some other case, but the sentence in a case cannot determine rights except between the contending parties.[14]

In the case of the abatement of a lawsuit, each litigant shall bear the expenses which he incurred in connection with the case discharged (**Canon 1739**).

Renunciation of the Instance and of Procedural Acts

1695. The plaintiff may renounce the instance at any stage and in any degree of the trial; likewise, both the plaintiff and the defendant may renounce either all or only some of the acts of procedure. For the validity of the renunciation it is necessary that it be made in writing, that it be signed by the party or by his proxy empowered thereto by special mandate, that it be made known to the other party and be accepted by him, or at least not attacked by him, and that it be admitted by the judge (**Canon 1740**). Once the renunciation has been admitted by the judge, it has, in so far as the acts which one has renounced are concerned, the same effect as the discharge or abatement of a lawsuit. The renouncing party is obliged to pay the costs of the acts which he renounces (**Canon 1741**).

Canon 1740 is not very explicit on the point whether one may relinquish the present lawsuit and retain the right to bring the same action again at a later date. Writing before the Code, Lega says that one can abandon the present case in court, because, for example, one realizes that at present one does not have the strong evidence of one's case which one expects to be able to get later on, and reserve to oneself the right to sue again. By this renunciation the parties are placed in the same position as they were before the lawsuit started.[15]

Probably it is possible under the Code to renounce the present suit without renouncing the right which one claimed in bringing the suit. The *Lex propria* of the Sacred Roman Rota and the Signatura Apostolica, Canon 34, states that the plaintiff can

[14] Lega, "De Judiciis Ecclesiasticis," I, nn. 389–398.
[15] *De judiciis Ecclesiasticis*, I, n. 614.

renounce either the instance, or the litigation itself, or the acts of the case.[16] Though it does not seem just that the defendant should be exposed to the danger of being molested a second time by being brought to court over the same matter by the same plaintiff, still the defendant can prevent this if he so desires, for Canon 1740 rules that no renunciation is valid unless the defendant accepts or at least does not oppose it; moreover, the defendant's expenditures have to be paid by the plaintiff who abandons the lawsuit.

TITLE IX

OF THE INTERROGATION OF THE PARTIES IN COURT

1696. The judge is obliged to interrogate the parties for the purpose of establishing the truth of a fact which the public interest demands should be established beyond doubt (e.g., a fact involving the validity of marriage, sacred ordination, etc.). In other cases, the judge may question one of the contending parties, not only at the request of the opposing party but even *ex officio,* whenever some proof advanced needs elucidation. The judge may question the parties at any stage of the trial before the case is closed. After the closing of the case new proofs may not be proposed by the parties except under the circumstances specified in Canon 1861 (**Canon 1742**).

1697. The parties are obliged to answer the legitimate questions of the judge and to tell the truth; they are not bound to answer questions about an offense committed by them. (The law does not oblige one to be one's own accuser; confession in court may be made, but it must be voluntary.) If a party has been legitimately questioned and refuses to answer, the judge shall decide the significance of the refusal, whether it is justified, and whether it is or is not to be held equivalent to an admission. If a party who is obliged to answer refuses, or answers but is found afterwards to have told a lie, he shall be punished by exclusion from all legal ecclesiastical acts (cfr. Canon 2256) for a time to be determined according to the circumstances by the judge. If the party had taken the oath to declare the truth before the interrogation, he shall be punished with a personal

[16] *Const. Ap. Pii X,* June 28, 1908; *De Curia Romana.*

interdict, if he is a lay person, or with suspension, if he is a cleric (**Canon 1743**).

1698. The oath to tell the truth cannot be administered to the accused by the judge in criminal cases; in civil cases he must demand the oath from the parties whenever the public welfare is at stake; in other cases, the administration of the oath is left to the discretion of the judge (**Canon 1744**). In the former Canon Law, after the joining of the issues, the parties had to take the oath called *juramentum de calumnia* (i.e., a solemn attestation that the parties were contesting their respective rights in good faith). Either party in a case could request the judge—if the latter did not do so of his own accord—to demand the oath of the opposing party.[17] If the plaintiff refused to take the oath *de calumnia,* he lost the right to sue in the case, and, if the defendant refused, he was considered to have admitted his liability. Schmalzgrüber discusses the general rule on loss of the suit by the refusal of the oath *de malitia,* and points out some exceptions.[18] The Code modifies the former law by leaving it to the discretion of the judge whether he will administer the oath to the parties, and obliges him to administer it only in cases in which the public welfare is at stake.

1699. Both the plaintiff and the defendant, as also the prosecutor and the *defensor vinculi,* can submit to the judge points or questions (called *positiones*), on which they desire him to question a party. In the drawing up, admitting, and proposing of these questions to a party, approximately the same rules are to be followed which are laid down for the questioning of witnesses in Canons 1773–1781 (**Canon 1745**).

Contrary to the practice in the secular courts of the United States, the parties are questioned, not by the counsel of the opposing party, but by the judge. Ordinarily, the judge does not of his own accord question the parties, unless the litigation concerns matters of not merely private but public interest, but he may question them if he finds it necessary to elucidate some proof adduced (cfr. Canon 1742). As a rule, the judge questions the parties only at the request of the opposing party, or, if the prosecutor or *defensor vinculi* takes part in the trial,

[17] *Decretales Gregorii IX,* c. 7, *De juramento calumniæ,* lib. II, tit. 7.
[18] *Jus Ecclesiasticum,* III, title VII, n. 15; *Liber Sextus Bonifacii VIII,* c. 1, *De Juramento calumniæ,* lib. II, tit. 4.

also at his request. The points or questions (*positiones*), which one party wishes the other to answer, must be submitted to the judge, who examines them, and then decides whether he shall or shall not put them to the other party, or whether he shall alter them.

1700. The parties must appear in person before the judge to take the oath and answer the questions, except the persons mentioned in Canon 1770, § 1, nn. 1–2 (**Canon 1746**). Cardinals, bishops, and distinguished persons exempted by the law of their country from testifying in court, can appoint a place where they choose to be heard; sick persons and nuns (Sisters with solemn vows) are to testify at home (cfr. Canon 1170). Canon 1316 rules that the oath which law requires or permits cannot be validly taken by proxy.

TITLE X

OF PROOFS

1701. No proof is required for the following:

(1) notorious facts, which are such by either notoriety of law or notoriety of fact, in accordance with Canon 2197, nn. 2–3;

(2) facts which are presumed by law;

(3) facts asserted by one of the contending parties and admitted by the other, unless either the law or the judge nevertheless demands proof (**Canon 1747**).

The facts enumerated in Canon 1747 are the same as those of which the secular courts of the United States take "judicial notice" in trials, and therefore do not demand proof. With regard to confessions or admissions in court, the judge may at his discretion demand that the adverse party prove what was admitted or confessed, and, in criminal cases and those which concern the public welfare, admission made in court does not suffice to relieve the adverse party of the obligation to prove the facts admitted (cfr. Canon 1751). On account of the importance of these cases, the Church is not satisfied with the admission or confession, but demands proof. In the criminal law of the various states of the United States, a confession in court is sufficient in itself for conviction, even in capital cases (cfr. Hughes, "Law of Evidence," 1907, p. 44). In some

criminal trials in ecclesiastical courts, the Ordinary, upon the confession of the offender, may dismiss him with a rebuke and penance, instead of instituting criminal proceedings (cfr. Canon 1947).

1702. The burden of proof rests with the person who makes an assertion. If the plaintiff does not prove his case, the defendant is freed from liability in connexion with the charge made against him (**Canon 1748**). The burden of proof rests on the plaintiff with regard to the claims made in his bill of complaint; it rests on the defendant with regard to the exceptions and counter-charges which he makes. If a defendant merely denies the claims of the plaintiff, he need not prove that he owes nothing to the plaintiff or that he is not guilty; the plaintiff has to prove the claim or the charge.

Proofs which seem to be asked to delay the trial (e.g., the examination of a witness who is far away, or whose domicile is unknown, or the examination of a document which cannot be speedily procured), shall not be admitted by the judge, unless these proofs seem necessary, because other proofs are lacking or are insufficient (**Canon 1749**).

Chapter I

OF THE CONFESSION OF THE PARTIES

1703. An assertion of a fact, made in writing or orally before the judge by one party against himself and in favor of the opponent, whether made of his own accord or in answer to a question of the judge, is called a judicial confession (**Canon 1750**).

In the case of some private affair, in which the public welfare is not concerned, the judicial confession of one party, made freely and deliberately, relieves the other party from the burden of proof (**Canon 1751**).

A party who has made a confession in court, cannot contradict his own confession, unless he does so immediately, or proves that it lacks the conditions specified in Canon 1750, or was due to a mistake of fact (**Canon 1752**).

That the retraction of one's confession must be made immediately (*in continenti*), is a rule taken from the former law, and the interpretation of some canonists held that it had to be made

before the notary acting as clerk of the court consigned the confession to writing. Cardinal Lega (*De Judiciis*, I, n. 667), however, remarks that it is left to the judge to decide, with due consideration of the condition of the person, the interval elapsed and the nature of the fact admitted, whether the retraction of the confession is still to be considered made *in continenti*.

1704. A confession, whether written or oral, which is made to one's opponent or to others outside the court, is called extrajudicial. If this confession is introduced in court, it is left to the discretion of the judge, after considering all the attendant circumstances, to determine its weight (**Canon 1753**).

1705. The Code does not speak of a confession or admission in court, which is only partly in favor of the opponent and partly against the party making the admission. Since it is not a confession pure and simple, it does not come under the rules here specified in the Code. Such so-called qualified admissions are rather a method of defence (e.g., if a party admits he owes another the sum of money which he demands, but that also the opponent owes him a debt which offsets his claim; again, in a suit for injuries, the defendant may admit that he inflicted the injury, but did so by accident, in self-defence, etc.). It is evident that a fact admitted by the defendant needs no further proof, but, by pleading exceptions and other defences, the defendant has the burden to prove the facts which he pleads in his defence.[19] Though proof seems superfluous if a fact is admitted by the opponent, the Code nevertheless admits judicial confession as full proof only in private affairs; in cases in which the public welfare is concerned (e.g., validity of marriage, sacred orders, punishment of criminals, etc.), judicial confession does not relieve the opponent from the necessity of proving the case.

Chapter II

OF WITNESSES AND TESTIMONY

1706. Proof through witnesses is admitted in all cases, but their admission is subject to the direction of the judge in accordance with the method fixed in the following Canons (**Canon 1754**).

[19] Lega, "De Judiciis Ecclesiasticis," I, nn. 446–459; Noval, "De Judiciis," nn. 449–455.

1707. Witnesses legitimately questioned by the judge must answer and tell the truth. Besides the priest and others who have knowledge of sacramental confessions (cfr. Canon 1757, n. 3, b), the following persons are exempted from the obligation to answer:

(1) pastors and other priests in connection with those matters which have been made known to them by reason of the sacred ministry outside of sacramental confession; civil magistrates, physicians, midwives, lawyers, notaries and others who are also bound to official secrecy by reason of advice given in reference to affairs connected with this secret;

(2) persons who fear that their testimony may occasion defamation, dangerous vexations or other very grave evils for themselves, or for their blood-relations or relations by marriage in any degree of the direct or in the first degree of the collateral line (**Canon 1755,** § § 1–2).

Witnesses who, in answer to a legitimate question of the judge, knowingly affirm a falsehood or conceal the truth, shall be punished in accordance with Canon 1743. With the same penalty are to be punished all who presume to induce a witness or an expert by promises or in any other manner to give false testimony or to conceal the truth (**Canon 1755,** § 3).

This exemption of persons from the obligation to answer the judge when asked to testify to certain facts is also recognized in the laws of the United States in the case of "privileged communications." Generally, the laws of the various states of the Union admit four classes of privileged communications: (1) professional communications; (2) political communications; (3) judicial communications; (4) social communications. "At the common law, there was only one class of professional communications privileged. This class comprised communications between attorneys and their clients. By statute, however, other classes have been added. These include communications between physicians and their patients, and communications between spiritual advisers and laymen. In reference to attorney and client, Greenleaf says: 'The protection given by the law to such communications does not cease with the termination of the suit, or other litigation or business, in which they were made; nor is it affected by the party's ceasing to employ the attorney and retaining another; nor by any other change of relations between

them; nor by the death of the client. The seal of the law, once fixed upon them, remains forever, unless removed by the party himself in whose favor it was there placed' " (Hughes, "Law of Evidence," 288).

As to physicians, it is essential that the purpose of the communication is to alleviate or cure. Communications between physicians attending the same patient are privileged, provided that such communications pertain to his condition or treatment. Physical defects or degrading marks on the patient may not be disclosed by the physician, nor may he disclose the nature of the ailment or disease of the patient, nor are his prescriptions admissible in evidence. The New York statute includes registered nurses in the ranks of those whose professional information is privileged.

At common law, communications between spiritual advisers and laymen are not privileged, but in many states of the United States such communications are privileged by statute. The New York statute, for instance, rules: "A clergyman, or other minister of any religion, shall not be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs" (Clevenger, "New York Practice," *Civil Practice Act,* 1920, in effect Oct. 1, 1921, § 351). The Canon Law goes further in protecting communications between a priest and a person who entrusts a secret to the former in his character of a minister of religion; it protects such confidences in the same manner as the civil law protects communications between attorney and client.

As to the group of persons mentioned in Canon 1755, n. 2, who are excused from giving testimony under the circumstances there described, the Canon Law is more liberal than the civil law. The latter does not exempt blood-relations and relations by marriage from testifying in the trials of their relatives, even though it may be a great hardship to give testimony. The only exemption in the law of the United States concerns confidential communications between husband and wife.

ARTICLE I—PERSONS WHO CAN BE WITNESSES

1708. All persons may be witnesses, unless they are explicitly rejected by the law either absolutely or partly (**Canon 1756**).

Witnesses rejected by the law are: (1) unfit, (2) suspected, (3) disqualified.

(1) Persons under the age of puberty and weak-minded persons are rejected as unfit (*non idonei*) to give testimony.

(2) The following persons are rejected as suspected: (a) *excommunicati,* perjurers, and persons who have been branded with infamy by a declaratory or condemnatory sentence; (b) persons who are of such vile character that they are not considered trustworthy; (c) public and bitter enemies of a party.

(3) The following persons are disqualified from acting as witnesses:

(a) Those who are the parties in the case or who take the place of the parties (e.g., the guardian in the case of his ward, the superior or administrator in the case of his community or pious institute which he represents in court), the judge and his assistants, the attorney and others who assist or have assisted the parties in the same case;

(b) priests in reference to all things of which they gained knowledge from sacramental confession, even though they have been freed from the seal of confession (by the will of the penitent); even whatever has been heard by anyone and in any manner on the occasion of a confession (e.g., persons waiting to go to confession may have heard some words of the penitent or the confessor) cannot be accepted even as an indication of the truth;

(c) husbands in the case of their wives and *vice versa,* blood-relations and relations by marriage in the case of persons related to them in any degree of the direct line and in the first degree of the collateral line, except in cases which deal with their civil or religious state the knowledge of which cannot be had from other sources, and when the public welfare demands that the truth be ascertained (**Canon 1757**).

1709. Unfit and suspected witnesses can be examined if the judge issues an order stating that he thinks it advisable to do so; their testimony, however, shall be of value merely as an indication of and a help towards proof of the case. As a rule such persons shall be examined unsworn (**Canon 1758**).

"At common law the following classes of persons were incompetent to testify: (1) parties to the record (i.e., plaintiffs and defendants); (2) persons pecuniarily interested; (3) persons mentally incompetent or otherwise incapacitated; (4) per-

sons convicted of infamous crimes; (5) persons who lacked in religious belief; (6) the husband or wife of a party to the suit, except where a crime was charged by one spouse against the other'' (Hughes, ''Law of Evidence,'' p. 265). By statute generally, both in England and in the United States, the rule excluding parties to the record from testifying has been abolished, except that in England it still obtains in criminal cases. To render a witness disqualified for reason of pecuniary interest in the suit, it was necessary that his interest was favorable to the party who calls him as witness.

The common law rule has been abolished by statute both in England and in the United States. The only survival of the rule excluding persons pecuniarily interested is that a beneficiary under a will cannot be a witness to the will, or testify in an action against the executor or administrator of a deceased person. Under the class of mentally incompetent persons are included insane persons, idiots, infants of tender years and intoxicated persons. An insane person who understands the nature of an oath, and is sane as to the facts concerning which he is called to testify, is a competent witness. An insane person may have lucid intervals, but an idiot (using the term in the strict sense) never has. As to intoxicated persons, the competency to testify rests with the sound discretion of the court. The same applies to persons who indulge in the use of stupifying drugs (opium, etc.). As to infants, there is no law disqualifying them from acting as witnesses prior to a certain age. Children between five and six years of age have been admitted as witnesses. It rests mainly with the trial judge to determine the competency of the child by examination in open court.

At common law persons who had been convicted of infamous crimes were incompetent witnesses. These crimes were treason, felony and the *crimen falsi*—that is, perjury, subornation of perjury, suppression of testimony by bribery, or conspiracy to procure the absence of a witness (cfr. Hughes, ''Law of Evidence,'' p. 276). The disqualification has been removed by statutes, but the conviction for the mentioned crimes may be shown in court for the purpose of lessening the credibility of the witness.

The disqualification of persons lacking religious belief was based on the theory that the only guarantee of truthfulness was

the oath. Both in England and in the United States the common law rule has been greatly modified.

ARTICLE II—INTRODUCTION, NUMBER AND EXCLUSION OF WITNESSES

1710. Witnesses are introduced by the parties. They may also be introduced by the prosecutor and the *defensor vinculi,* if they take part in the trial. The judge may *ex officio* introduce witnesses in cases of minors and others who are held equivalent to minors in law (e.g., a parish, hospital, etc.), and generally whenever the public good requires it. The party who introduced a witness can renounce his right to have him testify, but the opponent may demand that, despite this renunciation, such witness be examined (**Canon 1759**).

1711. If some person appears of his own accord to testify in court, the judge may admit or reject his testimony as he sees fit. He must reject a witness who offered his services of his own accord, if the judge thinks that he appeared only to delay unduly the trial or to obstruct in any manner justice and truth (**Canon 1760**).

1712. If proof through witnesses is desired, their names and domicile shall be indicated to the court, and the points or articles on which the witnesses are to be interrogated must be also submitted to the court. If the foregoing has not been done at least on the last day which has been peremptorily fixed by the judge, it is considered that the party has withdrawn his request for the summoning of the witnesses (**Canon 1761**). The judge has the right and duty to prevent the introduction of too large a number of witnesses in a trial (**Canon 1762**).

1713. The parties must make known to each other the names of the witnesses before their examination begins; if the judge prudently believes that this cannot be done without great difficulty, the names of the witnesses must be made known by the parties to each other at least before the publication of their testimony (**Canon 1763**).

1714. Witnesses must be rejected *ex officio,* if it is evident to the judge that they are forbidden to testify, without prejudice to the right of the judge (cfr. Canon 1758) to admit at his discretion witnesses called unfit and suspected. At the request of the opponent, witnesses must be rejected if a just reason for their rejection is proved; this exclusion of witnesses is called *repro-*

batio personæ testis. A party cannot object to the admission of a witness whom he himself presented, unless a new reason for objecting to him has come up after he had presented him; he may, however, object to his testimony. The objection to a witness must be raised within three days after the names of the witnesses have been made known to the party, and objection made at a later date shall not be heard, unless the party proves or at least affirms under oath that he did not previously know of the defect of the witness. The judge should postpone the discussion on the objection to a witness till the end of the trial, unless a presumption of law stands against a witness, or his defect is notorious, or the reason for the objection can be immediately and easily proved, or could not be proved later on (**Canon 1764**).

1715. The summoning of witnesses is to be done through the medium of the judge, who will issue a decree for this purpose, and the summons are to be served the witnesses in the manner prescribed in Canons 1715–1723 (**Canon 1765**). A witness who has been duly summoned, must obey or make known to the judge the reason for absenting himself. A disobedient witness who does not appear without a legitimate excuse, or who appears but refuses to answer, or to take the oath, or to sign his name to his testimony, may be punished by the judge with appropriate penalties and, in addition, be fined in proportion to the damage which his disobedience may cause to the parties (**Canon 1766**). If a witness lives in another diocese, the law provides that the judge has a right to invoke the assistance of the court of that diocese to summon and examine the witness (cfr. Canon 1570).

ARTICLE III—OF THE OATH OF WITNESSES

1716. Before testifying, a witness must take the oath that he will state the whole truth and nothing but the truth, without prejudice to the precept of Canon 1758. The parties or their proxies may be present when the oath is administered to the witnesses, without prejudice to the ruling of Canon 1763 (when the judge does not deem it advisable to let the parties know who the witnesses are). The witnesses may be dispensed from taking the oath, if there is question of mere private rights, and both parties to the case agree. But even when the oath is not demanded of the witnesses, the judge shall remind them of their grave obligation to tell the truth (**Canon 1767**).

The object of the law in requiring an oath is to arrive at the truth by binding the conscience of the witness. In the Ohio case of Clinton v. State, Justice Ashburn said: "The purpose of the oath is not to call the attention of God to the witness, but the attention of the witness to God; not to call upon Him to punish the false-swearer, but on the witness to remember that He will surely do so. By thus laying hold of the conscience of the witness and appealing to his sense of accountability, the law best insures the utterance of truth." Religious belief is not, as a rule, made a test of the qualification of a witness in the various states of the United States. Two states, Maryland and Arkansas, make theological belief in God essential to the competency of a witness. The other states make provision that a witness who has conscientious scruples against taking an oath, may make a solemn affirmation. Where a witness testifies without being sworn or affirming, and the omission is not discovered until after the verdict is rendered, the verdict may be set aside. If the omission is discovered before the jury retires, and no objection is made, the error will be deemed waived. The rule that witnesses must testify either under oath or affirmation, applies also to infants. The statutes of some of the states of the Union allow infants under ten years of age to testify without taking the oath.

1717. Though the witnesses have taken the oath to tell the truth, the judge on the conclusion of the examination of a witness, may if he deems it prudent demand an oath on the truth of the statements made, either in reference to all the points or some of them. This step is taken whenever the gravity of the affair and the circumstances of the testimony given seem to demand it (**Canon 1768**).

1718. The witnesses may also be bound under oath to keep the secret with reference to the questions proposed to them and the answers given by them until the time that the acts and proofs are made public; the judge may even bind them to perpetual secrecy if the testimony is of such a nature (cfr. Canon 1623) that defamation, discord, or other grave evils are feared from its publication (**Canon 1769**).

ARTICLE IV—OF THE EXAMINATION OF WITNESSES

1719. The witnesses are to be examined in the place where the court sits. From this general rule are excepted:

(1) Cardinals, bishops, and illustrious personages who by the law of their country are exempted from the obligation to appear before the judge for the purpose of testifying. All these persons may choose a place where they wish to testify, but must notify the judge of this choice;

(2) Persons who are prevented by illness, or some bodily or mental impediment, or by their state of life (e.g., nuns), from going to the place where the court sits. These are to be examined at home;

(3) Persons who are staying outside the diocese and cannot without great inconvenience return to the diocese and go to court. These are to be examined by the court of the place where they stay, in accordance with Canon 1570, § 2, the judge in the case forwarding the questions and instructions according to which the witness is to be examined;

(4) Persons who live within the diocese, but at such a great distance from the place where the court sits that they cannot without great expense go to the judge nor the judge to them. In this case the judge must appoint some worthy and qualified priest in the vicinity of the witness, who shall, with the assistance of another person acting as actuary, hold the examination of these witnesses according to the questions and pertinent instructions sent by the judge (**Canon 1770**).

1720. The parties cannot be present at the examination of the witnesses, unless the judge believes that their presence is desirable (**Canon 1771**).

Witnesses must be examined individually and separately. It is left to the discretion of the judge after the giving of testimony to confront the witnesses with one another or with a party in court (**Canon 1772,** §§ 1–2).

This may be done when all the following conditions concur:

(1) if the witnesses disagree among themselves or with the party in a serious matter which concerns the essence of the case;

(2) if there is no other easier way to discover the truth;

(3) if there is no fear of scandal or discords arising from the confronting of witnesses (**Canon 1772,** § 3).

The general public is not admitted to the courtroom during ecclesiastical trials, for it is considered that the ends of justice for both plaintiff and defendant are best attained by the excluding of all who are not necessary in the case. Under the common law

the trials are public, and the various states of the United States demand a public hearing. It has, however, been deemed necessary to bar the general public from certain cases in which the evidence is of a scandalous character, and some states have enacted statutes by which spectators (especially minors) may be excluded in actions for rape, seduction, abortion, criminal conversation, and the like. A similar statute has been enacted in England.

According to the Canon Law, the examination of witnesses is to be done in such a manner that, while one witness testifies, the other witnesses are removed from the courtroom. This is also the general practice in the courts of England and the United States, but the separation of the witnesses is not demandable as of right, but rests with the sound discretion of the court. In a few states the adverse party has the right to demand the separation. The parties, however, have the right to be present in court during the entire trial, and in an Indiana case (Larue v. Russell) Justice Frazer said: "This proceeding [of excluding one of the parties from the court room during part of the examination of witnesses] is probably without a precedent. The right of a party litigant to be present during the trial of his cause, that he may be heard in his own behalf, has been so long accorded by universal custom, and is so obviously necessary for the security of private rights, that the refusal to entertain the cause at all would scarcely be a greater error than the denial of this privilege." The Canon Law differs from the secular law on this matter, for Canon 1771 rules that the parties have no right to be present at the examination of the witnesses, unless the judge permits them to be present.

1721. The examination of witnesses is held by the judge, or by his delegate, or by an auditor whom a notary must assist. In the examination the questions are not to be proposed to the witnesses by anyone else than the judge or by the person who takes his place. Wherefore, if the parties, or the prosecutor, or the *defensor vinculi* are present at the examination, and have new questions which they want to be put to a witness, they may not themselves ask the questions, but must propose them to the judge or the person taking his place, who is to put them to the witness (**Canon 1773**).

The Canon Law procedure in the examination of witnesses

differs very much from the procedure followed in the secular courts. In the latter, the judge does not examine the witness, but the attorney of the party who called the witness conducts the examination to elicit his testimony upon all the material facts on which the party relies for judgment in its favor. After the attorney has finished his examination of the witness, he turns the witness over to the attorney of the opposing party for cross-examination on the points on which the witness has been questioned by the first attorney. In some states the witness in the cross-examination may be questioned on the whole case, even though the first attorney has questioned him only on one particular fact or phase of the case. Though the judge does not conduct the examination of witnesses, he is not a mere moderator between contending parties, but has large discretion in the application of the rules of practice; he may prevent a needlessly long examination, exclude evidence which is merely cumulative, prevent the witness from going beyond proper limits in giving his testimony, prevent counsel from asking the witness irrelevant questions, and also prevent needless interruptions by opposing counsel. He may ask the witness questions himself, and may even call a witness of his own motion and question him.

1722. A witness must first be asked not only the general questions about his own person—namely, his name and surname, birth-place, age, religion, state of life and occupation, domicile—but also his connections or relations with the parties in the case. Then follow the questions which relate to the case itself, and he must be asked from what source and how he obtained knowledge of the things which he asserts (**Canon 1774**).

1723. The questions must be brief and simple, not complicated, nor captious, nor cunning, nor suggestive of the answer (i.e., putting the answer into his mouth so as to trip him easily), nor in any manner offensive, nor irrelevant to the case in question (**Canon 1775**).

The questions are not to be made known to the witnesses before they go on the stand. If, however, the matters concerning which they are to testify belong to a period so remote that the witness could not answer with certainty unless he had time to reflect, the judge can before the examination tell a witness to reflect on certain facts, if he believes that it can be done without prejudicing his testimony (**Canon 1776**).

1724. The witnesses shall give their testimony orally, and they shall not be permitted to read a written statement, unless there is question of figures and accounts. In the latter case, they are allowed to consult the notes which they have brought with them to refresh their memory (**Canon 1777**). The answer is to be committed to writing immediately by the actuary, not only in substance but in the identical words used by the witness, unless in view of the slight importance of the evidence, the judge thinks it sufficient to have only the substance reported (**Canon 1778**). The actuary shall mention in his report whether the oath was taken, dispensed with or refused, whether the parties and other persons were present, what questions were *ex officio* added to the interrogatory presented to the judge (cfr. Canon 1773), and generally every worthwhile happening at the examination of the witnesses (**Canon 1779**).

Before the witness leaves the stand, the testimony given by him and written down by the clerk must be read to him, and he must be given leave to add, suppress, correct, or vary his statements. Finally, the witness, judge and notary must sign the document (**Canon 1780**).

1725. Witnesses who have been already examined, may be again called to the witness-stand, either at the request of a party or *ex officio,* before the acts or testimonies are made public, if the judge thinks it necessary or useful, and provided all danger of collusion or corruption of the witness is absent (**Canon 1781**).

ARTICLE V—OF THE PUBLICATION AND THE REJECTION OF THE TESTIMONY OF WITNESSES

1726. If the parties or their proxies were not present at the examination of witnesses, the testimony may be published by order of the judge immediately after the evidence of all the witnesses has been taken. The judge may defer the publication of the testimony until the submission of the other kinds of proofs has been completed, if he thinks it best in the case (**Canon 1782**).

1727. After the publication of the testimony:

(1) the right to reject a witness ceases, unless one proves or asserts under oath that one had no knowledge of the defect of a witness previous to the publication (cfr. Canon 1764);

(2) the right still remains to object to the manner of the examination because the rules of law have not been observed in

conducting the examination, or to the depositions themselves because one charges that the testimony is false, or at variance, or in contradiction to other testimony, or obscure, or that the witness did not have proper knowledge, and the like (**Canon 1783**).

The judge shall by his decree overrule the objection, if he knows that it rests on a futile basis or was made for the purpose of retarding the trial (**Canon 1784**). If the objection is sustained, the judge shall fix a short period of time within which the objecting party shall prove the reason for the rejection of a witness or of depositions, and then he shall proceed as in other incidental cases (**Canon 1785**). The rules of procedure on incidental cases are given below in Title XI (cfr. nn. 1764–1767)

1728. After the publication of the depositions, the witnesses shall not be questioned again on the same points, nor shall new witnesses be admitted except with caution and for a grave reason in cases which never become a *res judicata* (i.e., a case in which the sentence is so final that it cannot be reopened) ; to admit new witnesses in other cases, a most serious (*gravissima*) reason is required. In every case of admitting new witnesses, all danger of fraud and corruption must be removed, the opponent must be heard, and the opinion of the prosecutor or *defensor vinculi* asked, if either takes part in the trial. The judge shall rule on all these matters by his decree (**Canon 1786**).

ARTICLE VI—OF THE COMPENSATION OF WITNESSES

1729. A witness has the right to ask for compensation for the expenses incurred in travelling and during his stay at the place where court was held, and also for the losses sustained by the interruption of his business or work. After hearing the party and the witness, and if necessary also experts, the judge has the right to fix the amount to be paid for losses sustained and for reimbursement of expenses (**Canon 1787**). If the judge has demanded that the party calling witnesses deposit in advance a certain sum of money with the court to cover the compensation due to the witnesses (cfr. Canon 1909), and has peremptorily fixed the time within which such sum is to be deposited, the party who neglects to do so is considered to have waived the right to have the witnesses called and examined (**Canon 1788**).

ARTICLE VII—OF THE APPRAISAL OF THE DEPOSITIONS OF WITNESSES

1730. In weighing the depositions of witnesses the judge shall keep in view the following points:

(1) the status of the witness, his reputation for probity, and the position he holds (ecclesiastical or civil);

(2) whether his testimony is based on personal knowledge, especially sight or hearing, or whether it is based on rumor, public report, or things which he heard from others;

(3) whether the testimony is consistent and coherent or contradictory, uncertain, and vacillating;

(4) whether other witnesses corroborate the testimony, or it is unsupported (**Canon 1789**).

1731. If the testimonies are at variance, the judge shall consider whether the depositions are mutually contradictory, or whether they merely cover different facts or circumstances of a case, and therefore supplement each other (**Canon 1790**).

1732. The deposition of one witness does not constitute full proof, unless he is a so-called qualified witness who testifies as to things done in his official capacity (e.g., a pastor in reference to his pastoral duties or functions). If two or three absolutely trustworthy witnesses testify in court under oath as to some affair or fact, and do so of their own personal knowledge and their testimony is strictly concordant, it is considered sufficient proof. If, however, in view of the very serious nature of an affair or because of indications which create doubt as to the truth of things asserted, the judge believes it necessary, he may demand more complete proofs (**Canon 1791**).

Chapter III

OF EXPERTS

1733. The service of experts must be employed whenever the law or the judge demands their interrogation and opinion for the purpose of establishing some fact or determining the true nature of some thing (**Canon 1792**).

1734. The choice or designation of the experts pertains to the judge. He may make the designation in merely private cases at the request of both parties, or of either provided the other party consents; in cases, however, in which the public welfare

is concerned, the appointment of the experts must be done in consultation with the prosecutor or the *defensor vinculi.* It is left to the discretion of the judge to appoint one or more experts, according as the nature of the case and the difficulty of the affair may demand, unless the law itself fixes the number of experts (**Canon 1793**).

1735. The experts must use their skill in harmony with the laws of truth and justice, neither affirming a falsehood nor concealing the truth; if they fail in this duty, they shall be punished by the judge in accordance with Canon 1743 (**Canon 1794**).

1736. Other things being equal, those persons should be chosen as experts who have been declared capable by the authority of a competent board. Persons who in virtue of Canon 1757 are disbarred from giving testimony in court, cannot be appointed as experts (**Canon 1795**). Experts may be challenged for the same reasons as witnesses may be rejected. The judge shall decide by decree whether or not the objection is to be sustained, and, if he does sustain the objection, he shall appoint an expert in place of the one rejected (**Canon 1796**).

1737. Experts are considered to have accepted the appointment by the taking of the oath that they will faithfully fulfill their office. The parties may be present not only when the experts take the oath, but also when they exercise their office, unless the nature of the case, or decency, or the law, or the orders of the judge forbid their presence (**Canon 1797**). If, after having taken the oath, the experts do not execute their task within the time specified by the court, or if without a just cause they defer its execution, they are liable for damages (**Canon 1798**). After considering the suggestions which the parties may make in the matter, the judge shall specify in his decree every single item concerning which the aid of the experts is sought. The time within which the experts are to examine into the matter and give their opinion may be fixed by the judge if he thinks it necessary or useful, and he may also prolong this interval, after he has heard the parties on the proposed postponement (**Canon 1799**).

1738. If doubt arises as to the author of some writing, the judge shall at the proposal of the parties submit to the experts other writings for comparison with the one in question. If the parties disagree as to the papers which are to be used for the

purpose of comparison, the judge shall choose those papers which the party in question has acknowledged as his handwriting, or writings which the supposed author of the controverted paper wrote in his public capacity, and which are kept in archives or other public records, or his signatures which are attested by a notary or other public person before whom he affixed his signature. If the papers which have been submitted by the parties and the judge for the purpose of comparison, do not in the opinion of the experts suffice for a satisfactory investigation, and if the person who is supposed to be the author of the controverted writing is living, the judge shall at the request of a party or even *ex officio* summon him in order that he may with his own hand write in the presence of the judge or his delegate whatever the experts, the judge or his delegate may dictate. Refusal to write without proving a legitimate reason for such refusal is considered a confession of the authenticity of the controverted writing to the prejudice of the one who refused to write (**Canon 1800**).

1739. The experts may give their opinion either in writing or orally in presence of the judge; if it is given orally, it must be immediately taken down by a notary and signed by the experts. An expert, especially if he gives his opinion in writing, may be summoned by the judge to give whatever further explanation seems necessary. The experts must clearly indicate the ways and means adopted by them in carrying out the orders of the court and the chief reasons on which their opinion is based (**Canon 1801**).

Each of the experts shall make a distinct report, unless, in cases where the law does not stipulate otherwise (cfr. Canon 1980), the judge orders that a single report be subscribed by all. If one report is ordered by the judge, all differences of opinion among the experts, if there be any, must be carefully noted (**Canon 1802**). If the experts differ in their opinions, the judge may either ask the opinion of a more distinguished expert on the reports of the first experts, or he may have other experts make a new examination. The judge has authority to follow the same course, whenever the experts, after being appointed, become suspected or are found to be unequal to and unsuitable for filling their office (**Canon 1803**).

1740. The judge shall not take into account solely the opin-

ions of the experts, even though they are concordant, but shall also weigh the other circumstances of the case. When giving the reasons for his decision, he must state the arguments that moved him to accept or reject the conclusions of the experts (**Canon 1804**).

The expert opinion of witnesses is an exception to the general rule that a witness is not allowed to testify as to his opinion, conclusion, or inference from facts of which he has knowledge, but is permitted only to state facts of which he has personal knowledge. The expert opinion evidence is resorted to in the ecclesiastical, as well as in the secular courts, whenever the nature of the case, in the decision of the judge, demands expert opinion. The witness must be specially qualified to give such opinion (i.e., he must be possessed of the scientific or technical knowledge necessary to give an opinion in the case). The expert witnesses in ecclesiastical trials are chosen by the judge. In the secular courts of England and the United States the parties to the suit select their own experts. In some countries, including France and Germany, they are not permitted to do so. In France, expert witnesses are selected by the court; and in Germany they must be specially authorized by the government to give expert evidence (cfr. Hughes, "Law of Evidence," 161).

1741. The expenses and fees of the experts shall be fixed by the judge with fairness and equity in conformity with the acknowledged custom of the respective places; if a party feels aggrieved over the amount allowed by the judge, recourse may be had in accordance with Canon 1913 (**Canon 1805**).

Chapter IV

OF JUDICIAL ACCESS AND INSPECTION

1742. If the judge believes it necessary to go to the place of controversy and to inspect the thing itself (e.g., to inquire into a dispute over the boundary lines of two parishes), he shall, after hearing the parties, issue a decree to that effect, and therein state briefly what is to be done during this visitation (**Canon 1806**). The judge may perform the inspection either in person or through an auditor or a delegated judge (**Canon 1807**). When the judge inspects an object or a place, he may employ experts, if he deems their aid necessary or useful. If experts are em-

ployed, the precepts of Canons 1793–1805 shall be observed in so far as possible (**Canon 1808**). If the judge believes that there is danger of quarrels and disturbances, he can forbid the parties or their attorneys to be present at the judicial inspection (**Canon 1809**).

1743. The judge may examine witnesses either summoned *ex officio* or legitimately presented by the parties before the inspection at the time and in the place where the judicial inspection is held, if he thinks it advantageous for more complete proof or for the removal of the doubts on account of which the inspection had to be ordered (**Canon 1810**). A notary shall take diligent care that the acts show the day and hour of the inspection, what persons were present, and what was said or done or decreed by the judge in the course of the inspection. The report of the inspection shall be subscribed by the judge and the notary (**Canon 1811**).

Chapter V

OF DOCUMENTARY PROOF

ARTICLE I—OF THE NATURE AND WEIGHT OF DOCUMENTS

1744. In every kind of trial proof by documents, both public and private, is admitted (**Canon 1812**).

The principal public ecclesiastical documents are:

(1) acts of the Supreme Pontiff, of the Roman Curia and of Ordinaries, if the acts were issued in the exercise of their office and in authentic form; also authentic attestations concerning these acts made by the aforesaid persons or their notaries;

(2) instruments made by ecclesiastical notaries;

(3) judicial ecclesiastical records;

(4) records of baptism, confirmation, ordination, religious profession, marriage, and death, which are preserved in the Curia, or the parish, or the religious organization; also written attestations taken from the said records made by pastors, or Ordinaries, or ecclesiastical notaries, and authentic copies of them (**Canon 1813**, § 1).

Public civil documents are those which are considered as such by the laws of the various countries (**Canon 1813**, § 2).

Private documents are letters, contracts, last wills, and any other writings made by private persons (**Canon 1813**, § 3).

The secular law on written evidence divides writings into the following three general classes: (1) private writings; (2) public writings; and (3) quasi-public writings. Private writings are subdivided into: (1) attested writings, and (2) unattested writings. The modes of proof of authorship of these two subdivisions are governed by different rules. Public writings, according to their character, are divided into: (1) judicial, and (2) non-judicial. According to their mode of proof, they are subdivided into: (1) documents of record, (2) documents not of record. Judicial writings are subdivided into three classes: (1) judgments, decrees and verdicts; (2) depositions, examinations and inquisitions; (3) warrants, writs, pleadings, etc. The public records kept of the acts done in discharge of a public duty, though the law does not require it to be kept, is admissible in evidence. It is not essential that it be kept by the public officer himself, but it suffices that it is kept under his direction. As a general rule, public records are not conclusive as to their contents, but they are sufficient to establish their *prima facie* facts (Hughes, "Law of Evidence," 199).

The parochial and diocesan records are public documents in the ecclesiastical courts, but the secular courts of the United States do not accord them the recognition of public documents. The reason is that the bishops, pastors and other officials of the Church are not recognized as official by the laws of the states of the Union, because there is no official relation between the Church and the governments of the various states. The Church officials are regarded either as private individuals—or as heads of private corporations, if a diocese, parish, etc., has availed itself of the right to form a private corporation under the laws of the respective state. Under the rule of evidence that declarations of third persons made in the regular course of duty or business are admissible, in evidence, the church books or records serve to prove the facts therein contained under the following conditions: (1) the declarations or entries must have been made in the discharge of some duty or in the usual course of business; (2) they must have been made at the time when the transactions to which they relate occurred, or within a reasonable time thereafter; (3) the declarant must, as a general rule, have had personal knowledge of their contents; (4) the declarant must be dead, or for some other reason unavailable as a witness.

1745. Public documents, both ecclesiastical and civil, are presumed genuine until the contrary is proved by evident arguments (**Canon 1814**). The inspection or the attack of some document or writing may be proposed in court either as an incidental question or after the manner of a principal action (**Canon 1815**). For example, the judicial inspection of the original document may be asked, if the copy presented shows important variants from other papers purporting to be copies of the same original. A document may be attacked (e.g.) because one has reason to maintain that it is not made or signed by the person whose name appears as its maker or signer, or because it is defective in form, or there are provable errors in important facts stated in the document, etc.

1746. Public documents prove the facts which are directly and principally asserted: no further proof is required, and the judge is bound to pronounce in favor of the party whose contention is proved by a public document, which was sustained as such by the court (e.g., against attacks by the *defensor vinculi,* or the adverse party).

1747. Private documents which have been acknowledged by a party as his own writing, or recognized as genuine by the judge, prove against the writer or author and those who derive their claim from him as much as an extra-judicial confession; in themselves they have no force of proof against outsiders (**Canon 1817**). According to Canon 1753, an extra-judicial confession or admission of a fact, either written or oral, has not the force of full proof in favor of the opponent or to relieve him *ipso facto* from further proof, but the law leaves it to the judge to determine its weight. The private document amounts to an extra-judicial confession also against those persons who derive their claim to some right or property through the author or writer of the private document (e.g., in a suit regarding the right to a piece of land, the heir who stands in court is affected by the admissions made in a letter of the testator, if it has reference to the matter in litigation).

1748. In the case of defective documents—namely, those which show erasures, corrections, interpolations, or other defects —it is left to the discretion of the judge to determine whether and how far they prove anything (**Canon 1818**).

The alteration of a written instrument may consist of an

interlineation, an erasure, a cancellation or an addition. The alteration may be either material or immaterial. It is called material, when it changes the legal effect of the instrument; otherwise, it is called immaterial. A written instrument is invalidated by alteration if the following conditions concur: (1) if the alteration is material; (2) if it was made intentionally; (3) if it was made by the grantee or promisee; (4) if it was made without the consent of the grantor or promisor, and was made after the execution of the instrument. Alterations in a will made after its execution are void, unless the will is formally re-executed, and, where re-execution is not done, the will should be probated as originally made.

ARTICLE II—OF THE EXHIBITION OF DOCUMENTS AND OF THE ACTION TO FORCE THEIR EXHIBITION

1749. Documents have no force of proof in court, unless they are exhibited either in the original or in authenticated copy and are deposited with the chancery of the court. The only exceptions are documents which are public property (e.g., those published in the *Acta Apostolicæ Sedis,* or in the official organ of a diocese, etc.), or laws which have been properly promulgated (**Canon 1819**).

1750. Documents must be exhibited in authentic form and deposited in court in order that they can be examined by the judge and the opponent (**Canon 1820**). If a doubt arises whether the document is a faithful copy, the judge may, at the request of a party or even *ex officio,* order that the document itself from which the copy was made be exhibited. If this cannot be done at all or only with very great difficulty, the judge may delegate an auditor or request the local Ordinary to have the document examined and compared, prescribing the points on which and the manner wherein the comparison is to be made; both parties may be present at the collating (**Canon 1821**).

1751. If the documents are common to both parties and treat of an affair common to both (e.g., last wills and instruments which relate to successions, partitions of goods, contracts, and similar affairs concerning which there is a controversy between the parties), any one of the litigants may ask that they be exhibited in court by the party which is said to have them in his possession (**Canon 1822**).

1752. Nobody, however, is obliged to exhibit documents, though common to both parties, which cannot be communicated without danger of damage, in accordance with the rule of Canon 1755, or without danger of violating a secret which is to be kept. If, however, at least a part of the document which is of interest to the other party can be extracted and exhibited in authentic copy without the aforesaid inconveniences, the judge may rule that they be thus exhibited (**Canon 1823**).

1753. If a party refuses to produce a document which the law demands to be produced and which he is said to possess, the judge shall at the request of the opposing party—after hearing, if necessary, the prosecutor or the *defensor vinculi*—decree by interlocutory sentence whether and how the exhibition of the document is to be made. If the party refuses to obey the judge, the latter shall decide what importance is to be attached to this refusal. If the party denies that he has possession of the document, the judge can subject the party to an examination, and oblige him to take an oath on the matter (**Canon 1824**).

Chapter VI

OF PRESUMPTIONS

1754. Presumption is a probable conjecture about an uncertain affair. It is twofold, as it may be either a presumption of law (which is stated in the law itself) or a presumption *ab homine* (which the judge forms for himself). The presumption of law is either a simple presumption, or a presumption of law called *juris et de jure*—that is, an absolute presumption which does not admit proof to the contrary (**Canon 1825**).

1755. Against a simple presumption of law, direct as well as indirect proof to the contrary is admitted (e.g., a person who violates the law is generally presumed to have known the law, but proof that he actually was ignorant of the law is admitted); against an absolute presumption of law (*juris et de jure*) only indirect proof is admitted—that is, contrary to the fact which is the foundation of the presumption (**Canon 1826**). For example, Canon 1904 establishes an absolute presumption in favor of a judicial sentence which has become a *res judicata;* wherefore, the justice or truth of the sentence can never be directly

attacked, but one may prove that there had been no foundation for the lawsuit which was based on contract, because no contract had existed between the parties. The absolute presumptions are extremely rare in the canonical legislation (cfr. Canons 1904, 1972).

1756. He who has a presumption of law in his favor is freed from the burden of proof, which is thus shifted to his opponent; if the latter cannot prove that the presumption failed in the case, the judge must render sentence in favor of the one on whose side the presumption stands (**Canon 1827**). Presumptions which are not stated in law shall not be conjectured by the judge except from a certain and specific fact which is directly connected with the fact in controversy (**Canon 1828**). The presumption must thus be a kind of reasonable conclusion or inference from another specific fact established by evidence in the case. Since all inferential evidence is dangerous and easily misleads, the Code warns against conjectures.

Presumptions are recognized, not only by the ecclesiastical, but also by the civil law. The latter divides presumptions into those of law and those of fact. The presumptions of law are divided into conclusive and disputable presumptions: the conclusive presumptions are the same as the Canon Law presumptions *juris et de jure;* disputable presumptions are the same as the presumptions known in Canon Law as simple presumptions of law (*juris simpliciter*). If the law of the state admits a conclusive presumption, it has (like the presumption *juris et de jure*) the effect that no evidence to contradict it is admitted in court. The disputable presumption may be rebutted by evidence to the contrary, but the burden of proof is shifted to the party against whom the presumption operates. There are only a few conclusive presumptions in the laws of the states of the United States. The following are illustrations of the most commonly accepted conclusive presumptions: (1) an infant under seven years of age is conclusively presumed not to be capable of committing any crime; the Canon Law exempts them from ecclesiastical laws even though they might have the use of reason (cfr. Canon 12); (2) the continuous adverse user of land for twenty years conclusively establishes title: Canon Law calls this manner of acquiring ownership "prescription," and it generally adopts the laws of the respective state in this matter with the

proviso that no prescription is admitted unless it is based on *bona fide* possession from beginning to end of the prescribed period of prescription (cfr. Canon 1512), and that for certain goods the Canon Law rules exclusively shall be applied (cfr. Canon 1508); (3) a boy under fourteen years of age is conclusively presumed to be incapable of committing rape (there is no such presumption in Canon Law); (4) a girl of tender years is conclusively presumed incapable of consenting to sexual intercourse, the age limit varying in the several states from twelve to eighteen years (there is no such presumption in Canon Law); (5) all persons are presumed to know the law (Canon Law does not admit ignorance as an excuse from the laws that disqualify a person or render acts invalid; in other laws ignorance may be pleaded as specified in Canon 2229).

Chapter VII

OF THE OATH OF THE PARTIES

1757. If there is only incomplete (*semiplena*) proof, and there are no further means available to strengthen the proof, the judge may order or admit (if requested) the taking of an oath to supplement the proofs; this oath is called a supplementary oath (**Canon 1829**).

1758, This oath (*jusjurandum suppletorium*) is mostly employed when the circumstances which relate to the civil or religious state of a person cannot otherwise be ascertained. The judge should abstain from demanding or admitting the supplementary oath in criminal cases, and also in civil cases wherein a right or an affair of great import is involved, or a fact of too great importance, or if the right, the affair, or the fact is not proper to the person who is to take the supplementary oath (e.g., if the party is not personally in court but is represented by a proxy, in which case he needs a special mandate from the party to take the oath, cfr. Canon 1662). The oath may be demanded either *ex officio* (at the will of the judge), or at the request of the opposing party, or of the prosecutor or *defensor vinculi,* if either takes part in the trial. As a rule, it is demanded of the party who has produced more complete proof. It pertains to the judge to decide by decree whether and when such

circumstances concur as to make the demand for the supplementary oath necessary (**Canon 1830**).

1759. The party who is asked to take the supplementary oath in affairs which do not pertain to his civil or religious state, may for a just reason refuse to take the oath or request that the opponent take it. The judge must decide what significance that refusal has, whether it is legitimate, or whether it is rather to be held equivalent to a confession. The supplementary oath taken by one of the parties may be attacked by the other (**Canon 1831**).

1760. If the right to compensation for damages has been established, but the amount of the indemnity cannot be estimated with certainty, the judge can demand of the party who has suffered damage the oath which is called an *estimatory* oath (**Canon 1832**). In demanding the estimatory oath the following points must be observed: (1) the judge shall require the party who suffered damage to state under oath what goods or property were taken from him or lost to him by the malice of the other party, and to assess the price or value according to reasonable estimate; (2) if the valuation seems excessive to the judge, he may reduce it to an equitable amount, keeping in mind all the ways and means commonly employed in appraisals; if necessary, he may summon experts to assist him so as to make more certain of a true and just appraisal (**Canon 1833**).

1761. The parties may make an agreement to settle the dispute by an oath taken by either party, not only before the controversy in court has begun, but also during the trial; and at any time or stage of the case one party may with the approval of the judge demand of the other party an oath under condition that the controversy, either the principal action or an incidental question, may be settled by the oath. This is called the *decisive* oath (**Canon 1834**).

1762. The decisive oath may be demanded only under the following conditions:

(1) the oath must be concerning an affair in which cession and private settlement is admitted, and which is not of too great an importance or value to the litigating persons;

(2) it may be demanded by persons only who can cede their rights or make a private settlement concerning them;

(3) it may be demanded of persons only who can cede their

rights or make a private settlement, and who do not have full proof in their favor (if they have given full proof of their claim, they cannot be asked to take this oath, for they have a right to sentence in their favor);

(4) the oath may be demanded only as to mere knowledge of facts or an action personally known to or done by the party of whom the oath is demanded (**Canon 1835**).

1763. The party who has demanded the decisive oath of the opponent, may recall his demand at any time before the oath is taken; the opponent is at liberty to accept the demand and take the oath, or to refuse it, or to retort it on the party making the demand. If the oath is taken, the question as contained in the formula of the oath is settled in the same manner as though a cession or a settlement in court had taken place (cfr. Canons 1925–1928 on settlements). If the oath is refused but is not retorted on the opponent, it pertains to the judge to estimate the import of the refusal, whether it is based on good reasons or whether it is to be held equivalent to a confession. If it is retorted on the opponent, he must take the oath, or he loses his case. If the demand for the decisive oath is retorted on the opponent, it can be done only under the same conditions which are, in Canon 1835, required for the demand of the oath, and the oath is to be administered by the judge (**Canon 1836**).

TITLE XI

OF INCIDENTAL CASES

1764. An incidental case is a question which is raised by one of the parties—or by the prosecutor or *denfensor vinculi,* if either takes part in the trial—after the trial has begun (i.e., after the issuing of the summons), provided it is a question which, though not proposed explicitly in the bill of complaint, is nevertheless connected with the case in such a manner that it must as a rule be decided before the main question of the case can be adjudged (**Canon 1837**).

An incidental case may be proposed either orally or by a bill indicating the connection which it has with the principal case; the precepts of Canons 1706–1725 on the introduction of a case are, in so far as possible, to be observed (**Canon 1838**).

1765. After the judge has received the written or oral presentation of an incidental case, he shall hear the parties—and, if necessary, the prosecutor or the *defensor vinculi*—and decide whether the proposed incidental question is futile and raised only for the purpose of delaying the trial of the principal case, or whether the incidental question is of such a nature and has such connection with the principal case that it must be decided before the principal case can be settled. If he judges that it should be sustained, he shall admit the introduction of the incidental case; otherwise he shall by decree reject it (**Canon 1839**).

1766. It is left to the discretion of the judge to decide whether, in view of the nature and gravity of the affair, an incidental case shall be decided in a formal trial or by a mere ruling of the judge. If the incidental question is to be settled in formal trial, the rules which are laid down for ordinary trials shall be observed in so far as possible. The judge, however, shall take care that the terms of delay (e.g., the days within which the parties must produce proof and defence) shall be as brief as possible. If the judge decides that the incidental question is to be settled without formal trial, and he either rejects the incidental question or decides it, he shall in the document containing these acts briefly indicate the reasons from law and fact on which his ruling was based (**Canon 1840**).

1767. Before the principal case is finished, the judge may for a just reason correct or revoke an interlocutory sentence, either on his own initiative after giving the parties a hearing, or at the request of one of the parties after giving a hearing to his opponent. In all cases in which the prosecutor or the *defensor vinculi* takes part, their opinion must be asked before the judge changes an interlocutory sentence (**Canon 1841**).

Chapter I

OF CONTEMPT OF COURT

1768. A defendant who has been summoned and without a just excuse fails to appear in court either in person or by proxy, may be declared guilty of contempt of court (**Canon 1842**). The judge cannot proceed to declare him guilty of contempt unless it has been first ascertained:

(1) that the summons was legitimately issued and came to the notice of the defendant within due time, or at least should have come to him (e.g., if the defendant deliberately concealed his whereabouts);

(2) that the defendant has neglected to offer an explanation for not appearing, or has given no valid excuse.

These things may be proved either by a new summons of the defendant, ordering him to offer an excuse, if he can, for his failure to appear, or contempt may be proved by other means (**Canon 1843**).

The law of the various states of the American Union has in substance the same rules as Canon Law concerning failure of a defendant to appear in court (in person or by proxy) to answer the complaint of the plaintiff on the day appointed by the court and made known to him by the service of the summons, or, after having answered, for default in pleading his case. The New York Code specifies a number of cases in which the clerk of the court can enter judgment in favor of the plaintiff after the plaintiff has filed proof of the service of the summons on the defendant and a copy of the complaint, and proof by affidavit that the defendant has not appeared. The same procedure is followed when the defendant appears to answer the first summons, but makes default in pleading. In cases in which the clerk is not competent to enter judgment by default, the plaintiff may apply to the court or to a judge thereof for judgment (*Civil Practice Act*, §§ 485–490).

The Code of Canon Law also considers the criminal aspect of contempt of court (cfr. n. 1770). Disobedience to a legitimate order of a competent court is an offense, and may be punished by the court in summary proceeding, but in the ecclesiastical courts it is necessary to repeat the summons and prove disobedience to the second summons before the offender can be punished. In the secular courts it is not necessary to repeat the summons.

1769. The judge may declare a party guilty of contempt at the request of the opposing party—or of the prosecutor or the *defensor vinculi*, if either takes part in the trial—and, once the declaration has been issued, the judge may proceed with the case, observing the prescribed rules of procedure up to the final sentence and its execution. If the case proceeds to the final

sentence without the joining of issues (viz., in case the defendant refuses to answer the summons for the joining of issues), the sentence may cover only the claims made in the bill of complaint; if the joining of issues had taken place, the sentence covers the object of the issues—i.e., all the counts under which the plaintiff prayed for relief against the defendant (**Canon 1844**). The plaintiff does not win his case by the very fact that the defendant refuses to appear, either at the beginning of the trial or at any later stage of the same: he must prove his claim and the judge must conscientiously examine the proofs. If no joining of issues took place through the contempt of court of the defendant, the original bill of complaint is the basis for the suit; the plaintiff has to prove what he claimed in his bill, and the judge passes sentence on the claim in the bill; if the joining of issues took place, those issues are the basis of the trial, and, after the plaintiff has proved the counts in the issues, the judge must pronounce sentence on the issues.

1770. The judge may threaten a party guilty of contempt with ecclesiastical penalties for the purpose of forcing obedience to the court. If the judge wishes to do so, he must issue the summons a second time together with the threat of penalties in case of disobedience; he may not declare the party guilty of contempt or, if he has already declared him guilty of disobedience to the first summons (cfr. Canons 1843–1844), he cannot inflict the penalties, until it has been proved that even the second summons has failed to break the obstinacy of the party summoned (**Canon 1845**).

1771. If the defendant recedes from his obstinacy and appears in court before the final sentence, his conclusions and proofs, if he offers any, must be admitted. The judge must, however, beware lest the trial be through malice unnecessarily protracted (**Canon 1846**). The mere fact that the defendant was guilty of contempt does not necessarily prove that his coming to court in the course of the trial is done to delay the trial maliciously; otherwise he would have no chance to redeem his contempt of court. He has, however, excited the just suspicion of the court against himself by the contempt, and must, therefore, make his defence with all promptitude.

1772. After sentence has been issued, the person guilty of contempt of court may petition the judge who issued the sen-

tence to reinstate him in the right of appeal (which right he has lost by the contempt), but this petition must be made within three months from the day on which he had notice of the sentence; in cases, however, which never become irrevocably adjudged, the petition for reinstatement may be made even after the lapse of three months (**Canon 1847**).

1773. The above rules on contempt of court apply also to cases in which the defendant has obeyed the first summons, but becomes guilty of contempt in the course of the trial (**Canon 1848**).

Contempt of Court by Plaintiff

1774. If on the day and at the hour when the defendant, in obedience to the command in the summons, makes his first appearance before the judge, the plaintiff is absent and does not give any excuse at all or an insufficient one for his absence, the judge shall again summon him at the request of the defendant. If the plaintiff does not obey the new summons, or after answering the summons fails to begin the trial, or after having begun fails to prosecute it, the judge at the request of the defendant, or of the prosecutor or the *defensor vinculi,* shall declare him guilty of contempt, following the same rules which were laid down in Canons 1843–1845 for the declaration of contempt of the defendant (**Canon 1849**).

The former Canon Law was more favorable to the defendant, when the plaintiff did not appear through his own neglect. If the defendant had his defence prepared, he could demand that the court accept and examine his proofs against the claim of the plaintiff, and obtain a final sentence in his favor which estopped the plaintiff.

1775. The declaration issued by the judge that the plaintiff is guilty of contempt has the effect of depriving him of the right to prosecute his case. The prosecutor or the *defensor vinculi* has the right to make the case his own and prosecute it whenever the public welfare seems to demand such action. By the declaration of the contempt of the plaintiff, the defendant has the right to petition the court either that he may be discharged in the case, or that all acts done up to that time shall be declared null and void, or that he may be definitively freed from the claim or charge of the plaintiff, or that the trial may, even in

absence of the plaintiff, be conducted to the end (**Canon 1850**).

1776. The party who has been declared guilty of contempt of court and has not proved a legitimate excuse for his disobedience, whether it be the plaintiff or the defendant, shall be condemned to pay the cost of the trial in so far as the expenditures were caused by his contempt and also to indemnify the other party if expenses and losses were caused to him by the party in contempt. If both plaintiff and defendant are guilty of contempt, they are obliged to pay the cost of the trial *in solidum*, i.e., jointly and severally (**Canon 1851**).

Chapter II

OF THE INTERVENTION OF A THIRD PARTY IN A CASE

1777. A party who is interested in (i.e., affected in his rights by) a case in court, may be admitted to intervene in every instance of the case. In order that he may be admitted, he must before the case is closed (cfr. Canon 1860) present a bill to the judge in which he briefly informs him of his right to intervene. The party who intervenes is to be admitted in the stage of the trial which the case has reached, and a brief and peremptory term is to be assigned to him within which he must produce his proofs, if the case has reached the stage at which proofs are taken (**Canon 1852**). If the intervention of a third party seems necessary, the judge must either at the request of a party to the trial or *ex officio* order the third party to intervene (**Canon 1853**).

The Code does not specify the reasons or titles under which one may enter a lawsuit either as plaintiff or defendant with the original parties to the suit. It states in general that anyone whose legal rights are affected by the result of the action in court may intervene in any instance of the case (i.e., at the first trial or at the trial in appeal), provided he appears before the court has ruled that the taking of evidence has been closed. In the secular courts it is the general rule that parties who have a real interest in the matter litigated in court may demand to be made parties to the suit. Specific rules exist as to the various kinds of actions (e.g., arising from contracts, or from torts), and whether one may or must be joined either as plaintiff or defendant. It is evident that where there is a privity of interest,

which in the law of procedure means mutual or successive relationship to the same rights of property, the party in privity can sue and be sued. It has also been generally held that one may sue without privity where a promise is made, on a valid consideration, to one for the benefit of another (e.g., if A loaned money to B upon his promise to pay it to C, to whom A was indebted, C could sue B to recover the money, though there is no contractual relation between C and B). In tort action (injury or damage to person or property through negligence), there can be cases in which not only the injured party, but also third persons have the right to sue (e.g., injury done to one's servant, in which case the servant has a right to sue the tort feasor for the violation of his right of personal security, and the master for loss of services if such loss results from the injury to the servant).

Chapter III

OF ATTEMPTS PREJUDICIAL TO THE OBJECT IN CONTROVERSY PENDING THE LITIGATION

1778. Attempts to prejudice the rights of the parties in a case pending in court may not be made by one of the parties or by the judge; they may not without the consent of the party concerned make any changes as to the object or right in controversy, nor as to the terms or periods of time assigned by law or by the judge for the performance of certain judicial acts. The placing of the controverted property into the custody of a third party appointed by the court, and the seizure of the property of one of the parties for security (cfr. Canons 1672–1673), may be done by the court under the conditions specified in law (**Canon 1854**).

1779. Attempts against a party to a lawsuit are *ipso jure* null and void. Wherefore, a party who has been injured by the attempt, has the right to bring action for the declaration of the nullity of the acts. The action is to be brought before the judge of the principal case; if, however, the injured party suspects the judge of complicity in the attempt against him, he may raise the exception of suspicion. The rules how to proceed in case of suspicion raised against a judge are given in Canons 1614–1615 (cfr. nn. 1595–1596). The judge himself may not

decide the question of suspicion against himself, for nobody can be judge in his own case; it must be decided either by the co-judges, if several sit in the case, or by others designated in Canon 1615 (**Canon 1855**).

1780. Pending decision on the question of attempt, the course of the principal case is as a rule suspended, but, if it seems more expedient to the judge (provided he is not implicated in the attempt), the question of attempt may be discussed and decided together with the principal case. Questions of attempt must be discussed with the greatest possible speed and decided by decree of the judge; the parties and the prosecutor or *defensor vinculi* (if either takes part in the case) must be heard before decision is rendered (**Canon 1856**).

1781. If the attempt has been proved, the judge must decree its revocation or purgation (i.e., he must free the injured party from the effects of the attempt made against him). If the attempt was made through violence or fraud, the one who committed the attempt is liable for damages caused to the injured party (**Canon 1857**).

1782. The Code speaks of those attempts only which have been made against the rights of the party in reference to the suit by the opposing party or by the judge. It does not treat of attempts made by others, for, unless they interfered with the rights of the party at the instigation of a party or of the judge (in which case it would be the same as though the latter were themselves guilty of the attempt), the injury which is done to a party by a stranger to the suit may not be considered in the suit. The law against attempts during the pendency of a case comprehends also the transfer of the right of action to others and the transfer of the property or right in controversy.[20] There is in some cases a legitimate change of parties to a case against which the opponent has no right to complain (e.g., if one of the parties dies in the course of a trial concerning some property or right, the heir succeeds him in the right to prosecute the case; the same is to be said about bishops, pastors, and other administrators of the property of legal persons, for, when they go out of office, their successors take their place also as parties to pending lawsuits of the diocese, parish, hospital, etc.).

[20] Lega, "De Judiciis Ecclesiasticis," I, n. 253.

TITLE XII

OF THE PUBLICATION OF THE PROCESS, THE CLOSING OF THE CASE, AND PLEADING

1783. Before the pleading and the sentence in a case, all proofs which have been admitted into the acts of the case and which still remained secret must be published (**Canon 1858**). If permission was granted to the parties and their attorneys to inspect the acts of the process and to obtain copies of the same, the publication of the process is thereby made (**Canon 1859**).

1784. When everything that pertains to the producing of proofs has been accomplished, the trial must come to the closing of the case (*conclusio in causa*). This closing takes place whenever the parties questioned by the judge declare that they have nothing further to say, or when the time fixed by the judge for the submission of proofs has expired (provided the parties were able to avail themselves of the time granted), or when the judge declares that he is sufficiently informed in the case. The judge shall issue a decree on the closing of the case, no matter in what manner this took place (**Canon 1860**).

1785. After the closing of the case new evidence shall not be admitted, except in cases which never become irrevocably adjudged (e.g., marriage cases), or unless documents have been newly discovered, or in the case of witnesses who could not previously be introduced within the proper time for reason of some legitimate impediment. If the judge believes that the new proofs should be admitted, he must before deciding to admit them give a hearing to the opponent and allow him sufficient time to acquaint himself with and defend himself against the new proofs; otherwise the trial is invalid (**Canon 1861**).

Final Pleading

1786. After the closing of the case, the judge shall give the parties a proper interval of time, to be fixed at his discretion, to present to the court their defence or arguments either personally or through an advocate. The interval may be prolonged by the judge at the request of one party, provided the other

party is granted a hearing on the postponement, and may be shortened with the consent of both parties (**Canon 1862**).

1787. The defence must be made in writing, and, as a rule, as many copies must be made as there are judges, so that each judge may receive a copy. Copies must be given also to the prosecutor and the *defensor vinculi,* if they intervene in the trial. The parties, moreover, shall exchange copies between themselves. Whenever in his judgment it becomes necessary, and he knows that it can be done without too great hardship to the parties, the presiding judge may order that they get the defence printed and bound in pamphlet form, together with the chief documents in the case and also a summary of the acts and documents. In that case the judge shall command that nothing be printed without first exhibiting the manuscript to him and getting his permission to publish the same; he must, moreover, insist on the observation of secrecy, if the case demands it (**Canon 1863**).

The judge—or, in case of a collegiate tribunal, the presiding judge—shall prudently prevent too extensive a defence, unless the matter is regulated already by special law of the tribunal (**Canon 1864**).

1788. After the parties have exchanged copies of the defence, each party may present an answer to the defence of the other within a short period of time to be fixed by the judge under the provisions of Canons 1863 and 1864. The parties shall have the right to answer once only, unless the judge for a grave reason concedes a second reply. If he grants it to one of the parties, the other party has the same privilege (**Canon 1865**).

1789. So-called oral informations by which the attorneys endeavor to instruct the judge concerning the circumstances in law and fact relative to the case are forbidden. A moderate discussion under the direction of the judge for the purpose of clearing up some point is permitted, if the judge, upon the petition of either or both parties, thinks it useful to allow it. In the petition for the discussion, the parties must submit to the judge in writing a brief summary of the points of dispute to be discussed. The judge shall inform the parties of the points presented for discussion, appoint the day and hour for the discussion, and preside at it. One of the notaries of the court shall be present at the discussion in order that, if the

judge demands or a party asks for it and the judge consents, he may immediately make a report of the discussion, confessions or conclusions (**Canon 1866**).

1790. In civil cases, if the parties neglect within the proper time to prepare their defence, or if they leave the matter to the knowledge and conscience of the judge, he may immediately (i.e., on the day set for the defence or final pleading) pronounce sentence, provided he has full knowledge of the affair in litigation from the acts and the proofs of the case (**Canon 1867**).

TITLE XIII

OF THE SENTENCE

1791. A sentence is a legitimate pronouncement by which the judge decides a case proposed by the litigants and tried in judicial form. The sentence is called *interlocutory*, if it decides an incidental case; *definitive* or final, if it settles the principal case. Other pronouncements of the judge are called *decrees* (**Canon 1868**).

1792. Before pronouncing any sentence, the judge must have in his mind moral certainty about the matter which is to be defined by the sentence. He must obtain this certainty from the acts and proofs of the case. The judge must weigh the proofs according to his conscience, unless the law itself explicitly determines the effect of some proof—e.g., public documents which, if admitted as genuine, prove what is directly and principally asserted in them (cfr. Canon 1816). If the judge cannot attain this moral certainty, he shall pronounce that the right of the plaintiff has not been established, and he shall discharge the defendant, unless there is question of a so-called *causa favorabilis*—that is, a favored case, e.g., matrimonial cases on the validity of marriage—in which, when the matter remains doubtful, the sentence must be in favor of validity (cfr. Canon 1014); in a case concerning the right of possession, the parties are to be given joint possession (cfr. Canon 1697), if the judge remains doubtful (**Canon 1869**).

1793. Sentence is to be pronounced after the final pleading, but, if the case is very complicated and difficult owing to the great amount of conflicting claims and documents, the judge

may allow himself a proper interval of time before rendering the final sentence (**Canon 1870**).

1794. In a collegiate tribunal, the presiding judge shall appoint the day and hour when the judges are to meet to discuss the case. The meeting is to be held in the court-room, unless the peculiar nature of the case makes another place preferable. On the day appointed for the meeting each judge shall have ready in writing his conclusions on the merits of the case and the reasons from fact and law which prompted his opinion on the case. These conclusions shall be added to the acts of the case and shall be kept secret. The judge who has acted as referee (*ponens*) in the case, shall first read his conclusions, then the other judges follow in the order of precedence, and finally there shall be a moderate discussion of the case under the direction of the presiding judge, chiefly for the purpose of determining the wording of the decisive part of the sentence. In the discussion each judge may abandon his former conclusion on the case. If the judges do not wish to or cannot reach an agreement on the sentence in the first discussion, the decision may be reserved for another meeting, but they may not adjourn for more than one week (**Canon 1871**).

The Code does not explicitly state how a collegiate tribunal comes to the final sentence, but there is no doubt that it is to be done by voting and that the plurality of the votes decides the case (cfr. Canons 101 and 1873).

1795. If there is only one judge in a case, he alone frames the sentence; in a collegiate tribunal the judge who was appointed as referee (*ponens*) in the case (cfr. Canon 1584) frames and writes the sentence (**Canon 1872**).

1796. The sentence must:

(1) settle the controversy litigated in court (i.e., it must absolve or condemn the defendant in reference to the claims or accusations made against him, giving an appropriate answer to each of the doubts or points of the controversy);

(2) determine as far as the nature of the case permits what the condemned party must give, do, take upon himself, suffer, or refrain from; also in what manner, at what place and time the obligation is to be fulfilled;

(3) contain the reasons or motives in fact and law on which the decisive part of the sentence is based;

(4) settle the question of the cost of the trial (i.e., who is to bear it and how much is to be paid).

In a collegiate tribunal the motives are to be taken by the referee who writes the sentence from those things which the judges said in the discussion, unless the plurality of judges has agreed on and determined which motives should be given in the sentence (**Canon 1873**).

1797. Every sentence must in its opening words contain an invocation of the Divine Name. Furthermore, it must state—and in the following order—the names of the judge or judges, of the plaintiff, defendant, and proxies (properly designating their domiciles), and of the prosecutor or *defensor vinculi,* if either took part in the trial. Then follows a brief statement of the case itself, together with the claims made by the parties, and finally the decisive part of the sentence prefaced by the reasons on which it is based. It shall close with the date and place when and where it was framed, and be subscribed by the judge—or by all the judges, if there were several—and by a notary (**Canon 1874**).

If several judges conduct a trial in an ecclesiastical court, and the sentence is subscribed to only by the presiding judge and the notary of the court, the sentence is invalid in accordance with a declaration of the Committee for the Authentic Interpretation of the Code, July 14, 1922 (*Acta Ap. Sedis,* XIV, 528).

1798. The above-mentioned rules are to be observed especially in issuing a final sentence, but, in so far as the difference of the affair permits, they are also to be observed in interlocutory sentences (**Canon 1875**).

1799. When a sentence has been properly framed, it should be published as soon as possible (**Canon 1876**). The publication of a sentence can be done in three ways, either by summoning the parties to hear the sentence solemnly read by the judge sitting in court, or by notifying the parties that the sentence is at the chancery of the court and giving them permission to read it and to get copies of it, or, where such is the custom, by sending a copy of the sentence by registered mail (cfr. Canon 1719), in which case care must be taken to have proof that the parties actually receive the sentence (**Canon 1877**).

Canon Law ordains that all cases in court be tried by the judge, and in some cases by a collegiate tribunal of three or five

judges. In the secular system of courts, the courts of equity come nearest to ecclesiastical courts and procedure, except that the secular courts of equity have no jurisdiction in criminal cases, whereas the ecclesiastical courts have jurisdiction in both civil and criminal cases. In England and the United States, the trial by jury is the ordinary manner of trying cases in courts of law (as distinguished from courts of equity). The jury usually consists of twelve men chosen by the court. They are present at all sessions of a case in which evidence is furnished and at the summing up of the evidence by the attorneys for plaintiff and defendant, and, after the court has instructed the jury on the law applicable to the case, they retire to deliberate in whose favor sentence should be pronounced. Their decision is called the "verdict," and, when they have reached a unanimous verdict, they return to the court room and announce that they find for the plaintiff or the defendant (in civil cases), or that the accused (in criminal cases) is or is not guilty. The statutes of each state determine the civil cases in which trial by jury is granted, and usually have rules to the effect that the defendant may waive trial by jury. In criminal cases the Constitution of the United States guarantees to the accused the right of trial by jury.

In the secular courts, the matter of appeal (i.e., the removal of a cause to another court for retrial) is regulated by the statutes of each state. "The requisites for effecting an appeal are, generally, the giving of notice of intention to appeal, and the giving of a bond, conditioned that the appellant will prosecute his appeal without delay, and will perform the judgment of the appellate court. The appeal deprives the lower court of further jurisdiction as to the matter appealed, and vacates the judgment, and also the rulings on demurrer entered by such court; and, if the lower court did not have jurisdiction of the subject matter of the action, the higher court cannot acquire jurisdiction by appeal" (Phillips, "Principles of Pleading," n. 524).

TITLE XIV

OF LEGAL REMEDIES AGAINST THE SENTENCE

1800. If material errors have crept into a sentence, either in transcribing the decisive part of the sentence, or in relating the

facts, or the claims of the parties, or in calculations (e.g., wrong additions of sums, etc.), the judge himself may correct the error. The judge shall make the correction by issuing a decree to that effect at the request of a party, unless the opponent objects. If the opponent objects, it is considered like an incidental question which is to be settled without the formalities of a trial (cfr. Canon 1840) by decree of the judge, and this decree shall be added at the foot of the corrected sentence (**Canon 1878**).

Chapter I

OF THE APPEAL

1801. A party who feels aggrieved over a sentence, and also the prosecutor or the *defensor vinculi* in cases in which either took part, have the right to appeal from the sentence (i.e., have recourse to the superior judge against the sentence of an inferior), unless it is a case (cfr. Canon 1880) in which the law does not permit appeal (**Canon 1879**).

1802. There is no appeal:

(1) from the sentence of the Supreme Pontiff himself or from the *Signatura Apostolica;*

(2) from the sentence of a judge who has been delegated by the Holy See to judge a case with the clause barring appeal (*appellatione remota*);

(3) from a sentence vitiated by an invalidating defect (cfr. Canon 1895; below, n. 1815);

(4) from a sentence which has made a matter irrevocably adjudged (*res judicata*);

(5) from a final sentence which is based on an oath taken to end litigation in a case (cfr. Canons 1834–1836);

(6) from a decree of the judge or from an interlocutory sentence which does not have the force of a final decree or sentence, but in the appeal from the final sentence one can appeal also from the decrees and interlocutory sentences;

(7) from a sentence in a case in which the law demands that the matter be most speedily settled;

(8) from a sentence against a person guilty of contempt of court, who has not made satisfaction for his contempt;

(9) from a sentence against a person who has explicitly and in writing stated that he renounced the right to appeal (**Canon 1880**).

1803. The appeal must be presented to the judge from whose

sentence appeal is taken within ten days from the notice of the publication of the sentence (**Canon 1881**).[20a] The appeal may be made orally before the judge sitting in court, if the sentence is read publicly, and the appeal must then be immediately written down by the actuary; otherwise, it must be made in writing, unless the party cannot write (cfr. Canon 1707) either through lack of knowledge or some legitimate impediment (**Canon 1882**).

1804. The appeal must be prosecuted at the court of the judge to whom the appeal is made within one month from the placing of the appeal in the lower court, unless the judge before whom the appeal was made has granted the party more time to prosecute the appeal (**Canon 1883**). For the prosecution of the appeal it is required and suffices that the party petition the services of the judge of the superior court for the correction of the sentence from which one appeals, adding to the petition a copy of the sentence and of the written appeal which one presented to the judge of the inferior court. If the party cannot obtain a copy of the attacked sentence from the lower court within a month, the fact that the month expired does not bar appeal, but the party must inform the court of appeal of the circumstance, and this court shall force the judge of the lower court by precept to do his duty as soon as posible (**Canon 1884**).

1805. If one of the litigating parties dies or loses the office by reason of which he is a party to the case (cfr. Canon 1733) within the time set for the appeal but before the appeal was taken, the sentence must be communicated to those who inherit or succeed to the rights of the party, and the term fixed by law for the appeal begins to run for the new parties from the day when the sentence was announced to them. If the death or removal from office happens after the appeal has been presented, the successors shall be notified of the pending appeal, and the time set in law for the prosecution of the appeal begins to run from the day on which they were notified of the pendency of the appeal (**Canon 1885**).

1806. If the parties fail to act within the terms set for the appeal (i.e., either fail to appeal within ten days after they had knowledge of the publication of the sentence, or having made the appeal fail to prosecute it in the superior court within one month from the day on which they presented the appeal to the judge of

[20a] Legal notice of sentence and appeal therefrom, cfr. App. III, 75

the lower court), the appeal is considered dropped (**Canon 1886**). The effect is disastrous for the cause, for by the failure to appeal or to prosecute the appeal in due time the case becomes irrevocably adjudged (*res judicata*), except only in certain classes of cases (cfr. Canons 1902–1905), and no appeal is possible afterwards.

1807. The appeal made by the plaintiff benefits the defendant, and *vice versa*. If appeal has been taken by one of the parties on some point of the sentence, the opponent can incidentally appeal on other points of the sentence, though the term set for the appeal has expired; the opponent can make this appeal under condition also to recede, if the first party renounces the appeal. If the sentence contained several points, and the appellant attacks only some of the points, the other points are considered excluded from the appeal; if he did not specify any point in particular, the appeal is considered directed against all points of the sentence (**Canon 1887**).

1808. If one of several defendants or plaintiffs attacks the sentence, it is considered made by all whenever the object of the claim is indivisible or the obligation joint and several, but the cost of the appeal must be borne by the appellant alone, if the judge of the court of appeal confirms the first sentence (**Canon 1888**).

1809. An appeal *in suspensivo* suspends the execution of the sentence, and thus the full force of the principle applies that "pending the litigation no innovation shall be made." An appeal *in devolutivo* only does not suspend the execution of the sentence, though the litigation is still pending as to the merits of the case. Every appeal is *in suspensivo*, unless the law explicitly states otherwise. In certain cases (cfr. Canon 1917), the judge may order a provisional execution of a sentence notwithstanding the pending appeal *in suspensivo* (**Canon 1889**).

1810. An appeal having been made, the court to which it has been presented must forward to the court of appeal an authentic copy or the original acts of the case in the manner prescribed by Canon 1644 (**Canon 1890**).

1811. As no new cause of complaint may be added in the court of appeal, not even by way of useful cumulation, the joining of issues, by which the precise question to be settled by the court is fixed, can deal only with the questions whether the first

sentence is to be confirmed, or whether it is to be reversed either entirely or partly. If new documents and new proofs are offered, they may be added to the case by the court of appeal, provided there are legitimate reasons (cfr. Canons 1786, 1861) why the documents and proofs were not presented in the previous trial of the case (**Canon 1891**).

The court of appeal has the purpose of examining the sentence of the lower court and the evidence which was presented in the case by the parties. It is not to make a new case of it, and therefore the law admits presentation of new evidence, documents or witnesses, only under severe precautions (cfr. Canons 1786, 1861). If witnesses are summoned or new documents are admitted, the court of appeal must observe the laws of the Code on witnesses (cfr. Canons 1754–1791) and on proof by documents (cfr. Canons 1812–1824).

Chapter II

OF THE COMPLAINT OF NULLITY AGAINST THE SENTENCE

1812. The sentence is vitiated by incurable nullity in the following cases:

(1) if it has been issued by an absolutely incompetent judge, or in a collegiate tribunal by an insufficient number of judges in violation of Canon 1576 (cfr. Canons 1556–1568 on competent court);

(2) if it has been issued to parties of whom at least one had no right to stand in court (cfr. Canons 1646–1654);

(3) if somebody acted in the name of another without a legitimate mandate (**Canon 1892**).

1813. The nullity spoken of in Canon 1892 may be proposed either after the manner of an exception (which, as it may be raised at any future time, the Code calls *perpetual,* cfr. Canon 1667); or it may be brought after the manner of an action before the judge who issued the sentence, but such a suit can be brought only within thirty years from the date of the publication of the sentence (**Canon 1893**). The difference between the two ways of availing oneself of the complaint of nullity appears, for example, in a case where a party sued a priest in the bishop's court over a piece of land, the private property of the priest. Supposing the diocesan court gave sentence in favor of the plaintiff, and that

many years afterwards the heir of the priest goes over the case and finds in the acts one of those so-called incurable nullities of the sentence. If the thirty years have elapsed, he cannot bring the action, but if, in connection with the same property, the former plaintiff or his heir has a lawsuit with the priest or his heir, the priest or the heir may raise the nullity by way of an exception, no matter how many years have elapsed since the pronouncement of the sentence.

1814. The sentence is vitiated by a curable nullity:

(1) if there was no legitimate summons;

(2) if the sentence does not contain the motives or reasons for the decision, with the exception of the sentences of the Signatura Apostolica which are valid without stating the reasons (cfr. Canon 1605);

(3) if the sentence is not subscribed by the persons who must subscribe it (cfr. Canon 1874);

(4) if it does not bear the year, month, day and place when and where it was issued (**Canon 1894**).

1815. The complaint of nullity in the cases enumerated in Canon 1894 may be proposed either together with the appeal within ten days, or separately and by itself as an action on the nullity which must be brought before the judge who issued the sentence within three months from the date of publication of the sentence (**Canon 1895**). If a party fears that the judge who pronounced the sentence which is attacked for nullity may be prejudiced, and for that reason justly suspects him, he may demand that another judge, but in the same court, be substituted in accordance with Canon 1615 (**Canon 1896**).

1816. The complaint of nullity may be brought not only by the parties who think themselves aggrieved, but also by the prosecutor or the *defensor vinculi,* whenever either took part in the trial. Even the judge may *ex officio* cancel an invalid sentence issued by him, and amend it within the terms stated above for acting on its nullity (**Canon 1897**).

The procedure of Canon Law which is called "querela nullitatis contra sententiam" corresponds to the "motion for a new trial" in the secular courts of the United States. A new trial may be obtained upon motion of the party aggrieved, setting forth specifically the grounds upon which he assails the verdict or decision. "The grounds upon which a new trial may be

granted are specified by statute, and generally embrace the following: Irregularity in the proceedings of the court, jury, or prevailing party, whereby the complaining party was prevented from having a fair trial; misconduct of the jury, or of the prevailing party; accident or surprise that could not be guarded against; that the verdict or decision is contrary to the evidence, or to the law; error of law occurring at the trial, such as misdirection to the jury, or the admission or rejection of evidence contrary to law, and excepted to at the time; newly discovered evidence, material to the party, and which he could not, with reasonable diligence, have discovered and produced at the trial; and that the damages awarded are excessive'' (Phillips, ''Principles of Pleading,'' n. 523). If the judge overrules the motion for a new trial and the one who makes the motion excepts, he has, besides the appeal, a right to the ''review in error'' in the higher court. The reviewing court is limited to an examination of matters of law, appearing on the face of the record, and presented to the court by assignments of error in the complaint in error. If, therefore, the party bringing an action in error desires the higher court to consider the alleged mistakes of the trial judge in the rulings on the evidence (e.g., admissibility, relevancy, etc.), the party must obtain from the trial judge a bill of exceptions so that it be made part of the record of the case, because the review in error can consider only what is on the record.

Chapter III

OF THE OPPOSITION OF A THIRD PARTY

1817. If the precept of a definite sentence infringes on the rights of others (besides the parties in the case), they have the extraordinary remedy which is called ''opposition of a third party,'' by means of which persons who fear injury to their rights from the sentence may, before the execution of such sentence, attack and oppose it (**Canon 1898**).

Third parties who have a real interest in the matter in litigation between two contending parties have a right to intervene at any stage of the trial (cfr. Canons 1852–1853), and, if they desire to guard their rights, they must act in due time. Canon 1853 entitles the judge of his own motion to order the interven-

tion of third parties, if that seems necessary to do justice in the case. It may, however, happen that third parties whose interests are affected by the decision in a case had no notice of the litigation until judgment is rendered and execution ordered by the court. To stay the execution of the sentence the former Canon Law granted to such third parties the right of appeal, which was an extraordinary concession inasmuch as, under the general rules of law, persons who are not parties to a trial have no right to appeal from the sentence in the trial. The new Canon Law has created a more expeditious remedy by granting third parties the right to stay the execution of the sentence, by applying either to the same court which issued the sentence, or to the court of appeal, stating their claim. If they apply to the same court, the formalities of ruling on the claim and the consequent modification of the sentence, if the claim is allowed, are very simple, for it suffices to treat the claim after the manner of an incidental cause (cfr. Canons 1837–1841); but, if they apply to the higher court, the laws on appeal are to be observed, which means a new trial of the cause.

1818. The opposition may be made in either of two ways at the option of the party: either by asking the judge who issued the sentence to review it, or by appealing to the superior judge. In either case the opponent must prove that his rights are actually or probably injured by the sentence. The injury must arise from the sentence itself, either because the sentence is the cause of the injury, or because, if the sentence is executed, the complainant will be greatly prejudiced. If neither cause for complaint is proved, the judge shall decree the execution of the sentence notwithstanding the opposition of the third party (**Canon 1899**).

1819. If the opposition of the third party is admitted, and the complainant appears before the court of appeal, he must follow the laws of the Code for appeals; if he appears before the same judge who issued the sentence, the rules on incidental cases are to be observed (**Canon 1900**). If the complainant wins his case, the sentence which was first issued must be changed by the judge so as to relieve the opponent from any injury through the sentence (**Canon 1901**).

TITLE XV

OF THE *RES JUDICATA* AND REINSTATEMENT IN FORMER POSITION

1820. The term *res judicata* implies that a case is considered irrevocably adjudged, so that it cannot be opened again by any court in ordinary procedure. The only possible way in which the case may be brought into court again is by obtaining the benefit of reinstatement into the position which one had before the case became a *res judicata.*

A case is considered irrevocably adjudged:

(1) if two uniform sentences have been issued;

(2) if no appeal was made within the proper time from a sentence, or if an appeal was presented to the judge who issued the sentence but the appeal was not prosecuted in the superior court by the appellant;

(3) if it is one of those final sentences from which no appeal is granted, as enumerated in Canon 1880 (**Canon 1902**).

1821. Cases concerning the state of persons never become irrevocably adjudged, but, if two uniform sentences have been issued in these cases, they have the effect that further litigation in court is not to be admitted unless new and weighty arguments or documents are exhibited (**Canon 1903**).

The Code does not state what the "causæ de statu personarum" are. Very likely the three states induced by marriage, by sacred orders and by religious profession are meant.[21]

1822. An irrevocably adjudged case is by an absolute presumption (*juris et de jure*) considered true and just, and cannot be directly attacked. Besides, an irrevocable sentence makes law as to the parties, and, if one of the parties attempts to bring the other party to court on the same matter, the latter has the right to raise the exception of *res judicata* and thus bar further proceedings (**Canon 1904**).

Any judicial sentence (even that which has become a *res judicata*) creates rights and obligations between the parties only, but the judgment against a party is judgment also against third parties, who stand in privity with the original party (e.g., if the

[21] Noval, "De Judiciis," n. 675; Vermeersch-Creusen, "Epitome," III, n. 245. Cfr. App. III, 76.

bishop's court has ruled that some person has the right of way over a certain piece of land owned by a certain church, and that church in the course of time sells the land to another party who wants to stop the right of way of the other, the latter can sue on the former judgment which binds the grantee for reason of privity with the grantor).

Reinstatement in One's Former Position

1823. If neither the remedy of appeal nor the complaint of nullity is available against a sentence, one may have recourse to the extraordinary remedy of reinstatement in one's former position within the limitations specified in Canons 1687–1688, and provided that the injustice of the *res judicata* is manifest. The injustice is not considered manifestly established unless:

(1) the sentence was based on documents which were later found to be false;

(2) documents were afterwards discovered which peremptorily prove new facts of such a nature that they demand a contrary decision;

(3) the sentence was issued to the damage of one party by the fraud of the other;

(4) a precept of law was evidently neglected (**Canon 1905**).

The last-mentioned flaw—the "evident neglect of a precept of law"—has reference to the legal formalities in the trial of a case. Just what neglect entitles a person to ask for reinstatement is not specified in the Code, nor do the commentators who have commented on this Canon of the Code throw light on the subject. The term used by the Code (precept of law) is so general that it seems to include, not only neglect of a rule of procedure which causes the nullity of an act, but also neglect of other rules which are couched in the form of command in the procedural law of the Code.

1824. The judge who issued the sentence is competent to grant reinstatement in the former position, except in the case in which it is petitioned for reason of neglect by the judge of a precept of law, in which case the reinstatement is granted by the court of appeal (**Canon 1906**).

1825. The petition for reinstatement in one's former position suspends the sentence, if the execution of it has not yet begun.

If, however, probable indications give reason to suspect that the petition was made for the purpose of delaying the execution, the judge may order that the sentence be executed, but the petitioner of the reinstatement must be given sufficient security that he will be indemnified in case reinstatement is granted to him (**Canon 1907**).

TITLE XVI

OF THE COSTS OF TRIALS AND OF GRATUITOUS LEGAL SERVICE

Chapter I

OF THE COSTS OF TRIALS

1826. In civil cases the parties may be forced to pay a certain sum in view of the judicial expenditures, unless they are exempted from this burden in accordance with the provisions of Canons 1914–1916 (**Canon 1908**).

1827. The bishops of an ecclesiastical province in a Provincial Council, or in a convention, should fix a schedule of taxes, and define the amounts to be paid by the parties for judicial expenditures (e.g., summons, notifications by the court, indemnity of witnesses, decrees issued by the court, time and labor of the officials of the court); furthermore, the fees of the attorneys and proxies employed by the parties, fees for the translation and transcription of instruments, for their comparison with the originals and the attestation that they are true copies, and for the copying of documents from the archives. The judge may at his discretion demand that a deposit be made in advance with the chancery of the court, or sufficient security given to cover the costs of the court, and the indemnification of the witnesses. The plaintiff must guarantee the costs for acts which the court has to do in its official capacity; the party who requests that witnesses and experts be summoned, must vouch for their costs (**Canon 1909**).

1828. The party who loses the case must as a rule repay to the winner the costs of both the principal case and any incidental case which developed from the main case. If either the plaintiff or the defendant litigated without justification, the guilty party must be condemned also to repair the damages—e.g., for vexa-

tion of the other party, loss of time, labor and fatigue suffered, etc. (**Canon 1910**).

1829. If the pleas of the plaintiff or the defendant were only partially upset, or if the litigation was between blood-relations or relations by marriage, or the case dealt with a very difficult question, or if there is any other just and grave reason, the judge may at his discretion distribute all or a portion of the costs of the trial among the parties. In the sentence he shall state (cfr. Canon 1873) the cost of the trial, by whom and how it is to be paid (**Canon 1911**). If several persons in a case deserve to be condemned to pay the cost of the trial, the judge shall condemn them jointly and severally, if there is question of an obligation which is joint and several; otherwise he shall condemn them to pay each proportionately (**Canon 1912**). If several persons are made liable for the entire cost (*in solidum*) and one pays the whole cost, he has of course the right to demand that the other parties held liable with him jointly and severally reimburse him for their proportionate share of the cost.

1830. From the ruling of the court on the expenditures no strict appeal is permitted, but the party who believes himself aggrieved may within ten days raise an objection before the same judge, who can again consider this matter and correct and change the ruling on the costs. An appeal from the sentence of the principal cause implies an appeal from the ruling on the costs of the trial (**Canon 1913**).

Chapter II

OF GRATUITOUS LEGAL SERVICE AND REDUCTION OF JUDICIAL EXPENDITURES

1831. The poor who are not able to make any payment at all towards the judicial expenditures, have the right to free legal service; and, if they are able to pay only part of the expenditures, they are entitled to a reduction (**Canon 1914**).

A party who desires to obtain exemption from or reduction of the expenses, must petition the judge for it by written request and exhibit documents which show his condition and the amount of his worldly possessions; besides, he must prove that he does not engage in futile or rash litigation. The judge shall neither admit nor reject the petition, until he has obtained, if necessary, even

confidential information from which he can get certain knowledge of the financial standing of the petitioner, and has given a hearing to the prosecutor. Even after it has been granted, the judge may revoke the exemption or reduction, if in the course of the trial he ascertains that the assertion about the poverty of the petitioner was untrue (**Canon 1915**).

Canon Law does not specify the term "pauperes," but leaves it to the discretion of the judge to decide whether a person is entitled to the remission either of the entire cost of the trial or of a part thereof. Wherefore, Canon 1915 demands that, in the petition for partial or entire remission of the costs, the petitioner shall give an exact account of his financial standing. It is evidently necessary that the statement concerning his inability to pay the costs of the trial be endorsed by trustworthy persons known to the court (e.g., the pastor of the party), whom the court may question on their knowledge of the financial condition of the party. There is no doubt that persons who earn wages which furnish the person and his dependants no more than mere sustenance, though they are not living in abject poverty, are to be called poor. Even those working people who by frugality have in the course of many years paid for their own home, but have no further reserve funds and must rely on their wages or salary for their sustenance, are in the common estimation of the people in the United States to be considered poor. The Ordinary at the request of the judge is to appoint an attorney for the poor, who shall render legal services gratuitously to the party whom the judge believes entitled to free service. To act as attorney for a client in court, the approval of the Ordinary is necessary (cfr. Canon 1658), and that approval may be given generally for all cases in the diocesan courts or for an individual case only. As in the United States the dioceses usually have no men appointed as regular ecclesiastical attorneys, the Ordinary would have to request some priest or layman to serve the poor client. Persons who are so poor as to stand in need of alms for their sustenance, are certainly entitled to charitable service. As to other poor persons who are able to support themselves without appeal to charity, the words of Canon 1914 apply, namely, if they can pay only part of the cost of a trial, the judge should reduce the charges for the various items of cost.

1832. For the gratuitous legal service of the poor the judge

shall in each case appoint one of the attorneys approved in his court, and that attorney cannot refuse his services except for a reason approved by the judge; otherwise, he may be punished with an appropriate penalty and even with suspension from the office of attorney. If there are no approved attorneys, the judge shall request the local Ordinary to appoint, if necessary, another qualified person to render legal services to the poor (**Canon 1916**).

TITLE XVII

OF THE EXECUTION OF THE SENTENCE

1833. A sentence which has become irrevocably adjudged (*res judicata*) may be executed. The judge, however, can order the provisional execution of a sentence which has not yet become irrevocably adjudged in the following cases:

(1) in the case of making provisions or payments for the necessary maintenance of a party (*provisionibus . . . ad necessariam sustentationem ordinatis*);

(2) if grave necessity urges the execution, but, if the provisional execution is granted, the rights of the other party must be guaranteed by sufficient bail or bonds or securities, lest the execution should have to be revoked (**Canon 1917**).

Some commentators[22] translate the Latin "ordinatis" as "ordained men," and consequently refer this case to maintenance of clerics only. It is not evident that the term "ordinatis" here refers to clerics, for the Code never uses that term by itself and apart from laws dealing with the clergy to indicate clerics. In our opinion the word is not used in any technical sense, but is merely the perfect participle passive of "ordinare" (to settle or appoint).

1834. The execution cannot take place before the judge has issued the decree of execution by which he states that the sentence must be executed. According to the divers nature of the cases this decree may be either included in the wording of the sentence itself, or may be issued separately (**Canon 1918**).

1835. If accounts have to be rendered before the sentence can be executed, the rendering of the account is to be treated like an incidental case or question, and is to be decided in con-

[22] Eichmann, "Prozessrecht," 190; Haring, "Grundzüge des kath. Kirchenr.," 887; Perathoner, "Kirchliches Gerichtswesen," 60.

formity with the rules of law by the same judge who issued the sentence which is to be executed (**Canon 1919**).

1836. The sentence is to be executed by the local Ordinary of the place where the sentence of the first instance was issued, or by his delegate; if he refuses or neglects to execute the sentence, the execution pertains to the judge of the court of appeal, who can act either at the request of the party interested or *ex officio.* Among religious the execution of the sentence pertains to the superior who issued the final sentence or delegated the judge (**Canon 1920**).

1837. The executor of the sentence must execute the sentence according to the obvious meaning of its words, unless the tenor of the sentence itself permits him to use some discretion in the matter. He is permitted to consider objections relative to the manner and extent of the execution, but not to the merit of the case. If he knows from other sources that the sentence is manifestly unjust, he shall refrain from executing it, and refer the party who demands the execution to him who committed it to the executor (**Canon 1921**). If the executor is a delegate of the local Ordinary, he refers the party to the Ordinary, who in turn directs him to the judge who issued the sentence.

1838. In the case of real actions (i.e., cases in which the plaintiff tries to obtain the thing or property itself), the object which was adjudged by the sentence to belong to the plaintiff must be given to him as soon as the sentence has become irrevocably adjudged. In personal actions, when the defendant has been condemned to give some movable property, or to pay a sum of money, or to give or do anything else, four months are granted within which he must comply with the sentence. The judge may reduce or extend the period of four months, but may not reduce it to less than two or extend it to more than six months (**Canon 1922**).

The Code does not specify what actions are real and what actions are personal. Generally, real actions concern, says Lega, either the ownership of goods or rights over the property of others (e.g., right of way over land, mortgage on the land of another, or hereditary rights, or rights of the family and state of life). Personal actions, according to the same authority, arise either from contracts, or quasi-contracts, or from offenses, or quasi-offenses, or from the law itself (e.g., the complaint of

threatened injury from new work attempted by another, cfr. Canons 1676–1678).[23]

Though Canon 1922 states that the execution of a sentence in a real action, as distinguished from a personal action, must be granted to the successful party in the trial immediately after the sentence has become irrevocably adjudged, it is nevertheless necessary to obtain the decree of execution, unless it is contained in the sentence itself, for Canon 1918 states absolutely that no sentence can be executed without an order or decree of the judge who pronounced the sentence. In a real action, therefore, the party in whose favor judgment was rendered can as soon as the case becomes irrevocably adjudged obtain the decree of execution and its immediate application. In personal actions, the party who lost the suit has four months' respite after the decree of execution has been issued.

In the secular courts, just as in Canon Law, the judgment or sentence is considered to determine the relative rights and obligations of the parties to the suit, but it does not of itself operate the execution of the judgment. As a rule, the statutes of each state decree the manner of executing final judgments: this is usually done by an order of the court to the sheriff of the county where the judgment debtor resides, or where the real property is located against which the execution is to be made.

1839. In the execution of a sentence the executor must take care to injure as little as possible the party who lost the suit. Wherefore, he shall begin the execution by attaching things which are less necessary to him, and shall not touch things which he needs for his sustenance and for the exercise of his profession or trade. In the case of a cleric, the executor may not attach what he needs for respectable maintenance, as Canon 122 decrees. The judge shall not proceed to the execution of a sentence which deprives a cleric of his benefice if the cleric has taken recourse to the Holy See, but if it is a benefice to which the care of souls is attached, the Ordinary shall substitute a vicar to attend in the meantime to the care of souls (**Canon 1923**).

1840. The executor shall first employ admonitions and precepts against a person who resists the execution, and he should not coerce him with spiritual penalties and censures except when necessary and then only by degrees (**Canon 1924**).

[23] Lega, "De Judiciis," I, nn. 181–183.

Section II

OF PARTICULAR REGULATIONS TO BE OBSERVED IN CERTAIN TRIALS

TITLE XVIII

OF THE WAYS OF AVOIDING CIVIL TRIALS

Chapter I

OF COMPROMISE

1841. As it is highly desirable that litigation be avoided among the faithful, the judge shall admonish the parties between whom some civil controversy about their own private affairs has arisen and which they have taken to court to have it settled by judicial trial, to come to a compromise, if there appears to be some hope of a friendly settlement. The judge can satisfy this duty either before the parties are summoned to court or when they are for the first time in court, or finally at any time that he judges most opportune and effective for proposing a compromise. It is not, as a rule, becoming to the dignity of the judge to make the proposal personally; he should rather commit it to some priest, especially to one of the synodal judges (**Canon 1925**).

The civil law also favors friendly settlements of disputed rights and claims, and encourages defendants to offer a compromise to the plaintiff by denying to the plaintiff who refused the offer the right to allege the offer in the course of the proceedings as a proof that the defendant admitted plaintiff's claim. The New York Practice Act states: "Before trial, the defendant may serve upon the plaintiff's attorney a written offer to allow judgment to be taken against him for a sum, or property, or to the effect, therein specified, with costs. If there be two or more defendants, and the action can be severed, a like offer may be made by one or more defendants against whom a separate judgment may be taken. If the plaintiff, within ten days thereafter, serve upon the defendant's attorney a written notice that he accepts the offer, he may file the summons, complaint, and offer, with proof of acceptance, and thereupon the clerk must enter

judgment accordingly. If notice of acceptance be not thus given, the offer cannot be given in evidence upon the trial; but, if the plaintiff fails to obtain a more favorable judgment, he cannot recover costs from the time of the offer, but must pay costs from that time" (§ 177). The same Act has the following on compromise by the plaintiff where the defendant sets up a counter-claim: "Where the defendant sets up a counter-claim to an amount greater than the plaintiff's claim, or sufficient to reduce the plaintiff's recovery below fifty dollars, the plaintiff may serve upon the defendant's attorney a written offer to allow judgment to be taken against him for a specified sum, with costs, or against the defendant for a specified sum and against the plaintiff for costs. If the defendant, within ten days thereafter, serve upon the plaintiff's attorney notice that he accepts the offer, either party may file the summons, complaint, answer, and offer, or copies thereof, and proof of acceptance; and thereupon the clerk must enter judgment accordingly. If notice of acceptance be not thus given, the offer cannot be given in evidence upon the trial; but, if the recovery be not more favorable to the defendant than that so offered, he will not be entitled to recover costs from the time of the offer, but must pay costs from that time" (§ 178). "Unless an offer or an acceptance, made as prescribed in the foregoing sections, is subscribed by the party making it, his attorney must subscribe it and annex thereto his affidavit to the effect that he is duly authorized to make it in behalf of the party" (§ 179).

1842. In the compromise the rules of the civil law of the place where the compromise takes place should be followed unless they contravene the divine or the ecclesiastical law. The precepts of the subsequent Canons must also be observed (**Canon 1926**).

1843. A compromise cannot validly be made in criminal cases, nor in civil cases in which there is question of dissolving a marriage, nor in matters pertaining to benefices when there is litigation about the title itself to a benefice, unless the legitimate authority sanctions the compromise, nor in spiritual matters whenever the compromise requires payment by means of temporal goods. In the case of temporal ecclesiastical goods and of those things which, though annexed to the spiritual, can be dealt with apart from their spiritual aspect (e.g., a consecrated chalice, a consecrated church or chapel), the compromise can be made,

but the formalities of law for the alienation of ecclesiastical property must be observed, if the matter is of sufficient importance (**Canon 1927**).

1844. The effect of a compromise happily reached is called *compositio* or *concordia* (friendly settlement or agreement) The expenditures which had to be made to reach the settlement are to be borne in equal shares by the two parties, unless they explicitly made a different agreement (**Canon 1928**).

Chapter II

OF COMPROMISE BY ARBITRATION

1845. In order to avoid judicial litigation, the parties may also make an agreement by which the controversy is committed to the judgment of one or several persons who shall decide the dispute according to law, or deal with the affair according to the rules of equity. If they are to follow the rules of law, they are called *arbitri;* if they are to follow the dictates of equity, they are called *arbitratores* (**Canon 1929**).

The distinction between the *arbitri* and the *arbitratores* has been adopted from the former Canon Law. The *arbitri* have quasi-judicial power to summon the parties, examine witnesses and in general proceed in the manner in which the judge of a court proceeds. For this reason the Code says that they are to decide the controversy according to law. From the decision of the *arbitri* appeal can be taken to the ordinary court to which the case would have gone if the parties had not agreed on the *arbitri.* The other form of arbitration by the so-called *arbitratores* is the ordinary form of arbitration from which there is no appeal.[24]

1846. The rules of the civil law of the respective country are to be applied to arbitration (cfr. Canon 1926), and the law of Canon 1927 relative to the cases which are not subject to settlement by friendly agreement applies also to arbitration (**Canon 1930**)

In civil law the arbitration proceedings are usually settled by statute of the individual states. Generally speaking, the law encourages arbitration which means a trial of a controverted claim before one or more outside persons selected by the parties

[24] Lega, "De Judiciis Ecclesiasticis," I, nn. 16–37.

for that purpose. The statutes also point out the cases in which arbitration is not permitted, e.g., the New York Practice Act rules that no arbitration can be made where one of the parties to the controversy is an infant, or a person incompetent to manage his affairs by reason of lunacy, idiocy or habitual drunkenness; and in cases where the controversy arises respecting a claim to an estate in real property, in fee (title or ownership) or for life (§ 1448). The act by which parties commit the settlement of the disputed right or claim to arbitrators is called a submission, and the decision of the arbitrator is called an award. The statutes also regulate the formalities of the written agreement, its recording, and the manner of procedure of the arbitrators who, generally speaking, are authorized to hear testimony with the same powers as a board authorized by law to hear testimony. If several arbitrators are agreed on by the parties, they may specify whether the award is to be made by a majority of them or by concurrence of all. When the award is made, any party to the submission may within the time prescribed by statute (within one year according to New York Practice Act, § 1456) apply to the court specified in the submission for an order confirming the award. If the court grants the order for confirmation, judgment is entered on the judgment-roll and it has the same effect as a judgment in an action, and an order of execution can be obtained from the court. The New York Practice Act grants appeal from the award in the same manner as appeal from a judgment in an action (§ 1464).

1847. The office of *arbiter* cannot validly be held by lay persons in ecclesiastical cases, nor by persons excommunicated or marked with infamy by a declaratory or condemnatory sentence; religious should not accept the office of *arbiter* without permission of their superior (**Canon 1931**).

1848. If the parties do not agree on a friendly settlement nor on arbitration, their controversy must be settled by formal trial according to the procedure outlined in the First Section of Book IV (**Canon 1932**).

TITLE XIX

OF CRIMINAL TRIALS

1849. Offenses which are subject to criminal procedure are public offenses. The offenses spoken of in Canons 2168–2194 are not prosecuted in formal criminal trial, but by application of punishments in the manner specified in these Canons. In offenses subject to the jurisdiction of both the ecclesiastical and the civil court, the Ordinaries should not as a rule proceed against a culprit, if he is a lay person, and the secular court by proceeding against him has sufficiently safeguarded the public welfare. Penances, penal remedies, excommunication, suspension, and interdict can be inflicted also by way of precept without judicial procedure, provided the offense is certain (**Canon 1933**).

Chapter I

OF THE ACTION OF ACCUSATION AND OF DENUNCIATION

1850. Criminal actions or accusations are reserved to the prosecutor alone, to the exclusion of all others (**Canon 1934**). Nevertheless, any of the faithful may at all times denounce the offense of another for the purpose of demanding satisfaction (e.g., for slander), or to get damages for losses sustained through the criminal act of another (which frequently happens in crimes), or out of zeal for justice to repair some scandal or evil. Even an obligation to denounce an offender exists, whenever one is obliged to do so either by law or by special legitimate precept, or by the natural law in view of the danger to faith or religion or other imminent public evil (**Canon 1935**).

The Code of Canon Law adopts the system of prosecution of offenders which is most generally followed in the criminal procedure in the various countries. The offender is brought to trial by the official whose office it is to prosecute offenders in the name of the state or the people, but in the United States the indictment or bill is presented by the prosecutor to the grand jury. The grand jury investigates and examines witnesses to ascertain whether the charge made against the accused is true, and if the number of grand jurors required by the statutes of the respective state vote in favor of sustaining the accusation

of the prosecutor, the foreman of the jury indorses it as "a true bill," signs it, and returns it in open court. This presentment in open court renders it an indictment. The number of persons who constitute the grand jury differs in the various states. At common law a full panel consists of twenty-three men, twelve of whom must concur in order to return an indictment. Where the statutes of the state have changed the number of the grand jury, they also specify how many must concur in finding a true bill. Usually the criminal cases come before the grand jury after an offender has been arrested and after a summary investigation before the magistrate who ordered the arrest, or under whose authority the arrest was made, has shown that there is probable cause for the arrest; the magistrate then orders the prisoner to be held for trial, either in prison or at bail given by a person responsible to the court for the appearance of the accused on the specified day. "In England the grand jury may institute on its own motion any prosecution it sees fit, and summon witnesses. A few American States follow this view. Another holding is that the grand jury can not act until after a preliminary examination of the accused before a magistrate. The general rule in the United States is that the grand jury may inquire into offenses of which it has personal knowledge or which are of public notoriety, and such other offenses as it is called upon by the court or prosecuting officer to investigate, but cannot inquire into other offenses unless the accused has been examined before a magistrate" (Hughes, "Criminal Law and Procedure," 1919, § 899).

1851. The denunciation must be made by the denouncer in a signed document or orally to the local Ordinary, the chancellor of the Curia, deans, or pastors. If the denunciation is made orally, these latter must consign it to writing, and forward it at once to the Ordinary (**Canon 1936**). The person who denounces an offense must render assistance to the prosecutor to prove the offense (**Canon 1937**).

Private individuals may participate in the accusation of a violator of law (which in Canon Law is called a "denunciation"), and they may denounce the wrongful action, not only for the redress of injuries which they may have suffered thereby, but also from zeal for law and order. In Canon Law the denunciation of the commission of an offense by private persons

is to be made to the Ordinary of the territory or to other officials of the Church, the chancellor of the diocese, or vicars-forane, or pastors, who must forward it to the local Ordinary. The Ordinary thereupon orders an investigation, and the denouncer must assist the prosecutor in obtaining the evidence. In the secular law of criminal procedure private individuals may also have an active part in setting the machinery of criminal prosecution in motion. A private citizen in the United States has the right to arrest offenders for the commission of certain violations of law specified by the statutes of each state, and, furthermore, he has a right to make complaint to the magistrate (who has authority to order an arrest) of the crime committed, offering to prove the same. In minor offenses (misdemeanors) the intervention of the grand jury is not necessary, but the so-called information of the prosecutor (i.e., the allegation of the prosecutor that he believes there is sufficient evidence for instituting a criminal action) suffices. The statutes of each state determine the particulars as to the cases and manner in which indictment without the grand jury is permissible.

1852. In cases of injuries or defamation, the criminal procedure cannot be instituted except on the denunciation or complaint of the injured party. If, however, a cleric or religious (especially an ecclesiastical dignitary) has been the victim or agent of an injury or grave defamation, the criminal action may be brought also *ex officio* (**Canon 1938**).

Since injuries and defamation are ordinarily private affairs which do not impair the public welfare, the prosecuting attorney (*promotor justitiæ*) of a diocese, religious order, etc., cannot institute proceedings against the offender in the name of the public authority. If, however, the public welfare demands that the person who was guilty of the injuries, slander, libel, etc., be punished (e.g., in view of the scandal given by insults, slander, etc., of a bishop, vicar-general, etc., or of the bad example and destructive influence of clerics and religious injuring or slandering other persons), the prosecuting attorney may in the name of the public authority begin action in criminal procedure against the guilty parties.

The secular law follows the same principle, for it considers these offenses private wrongs and not crimes (i.e., a wrong which the government deems injurious to the public at large, and

punishes through a judicial proceeding in its own name). The State will not prosecute for offenses which are of the nature of private wrongs, unless prosecution is insisted upon by complaint of a citizen. Usually the private wrongs are redressed by civil suit for damages, brought by persons who have suffered through the wrongful act or omission of others.

Chapter II

OF THE INVESTIGATION

1853. If an offense is neither notorious nor altogether certain, but has become known through rumor and public report, or through denunciation, or from complaint for damages, or from general inquiry instituted by the Ordinary, or from any other cause, a special investigation must be conducted to ascertain whether and how far the incrimination is justified, before a person can be summoned to answer for his offense. This rule must be adhered to, whether there is question of inflicting a so-called vindicative penalty or a censure, or of issuing a declaratory sentence of a penalty or censure to which one has become liable by the offense (**Canon 1939**).

Canon 1933 states that, if the commission of an offense is certain, penances (cfr. Canons 2312–2313), penal remedies (cfr. Canons 2306–2311), excommunication, suspension, or interdict can be inflicted even by way of precept without judicial procedure. Canon 1939 applies when the offense is not certain. In order to punish by way of precept, the certainty must be such that the crime can be fully proved against the accused, and the means to prove it are actually at hand, and the means must be also available to show that there is no excuse from liability for the offense.[25]

1854. Though this investigation may be made by the local Ordinary himself, it should as a general rule be committed to one of the synodal judges, unless the Ordinary has a special reason why he would rather commit it to somebody else (**Canon 1940**). The inquisitor shall not be delegated generally for all cases, but, as often as a case arises, a man shall be delegated for the individual instance. The inquisitor has the same obliga-

[25] Noval, "De Judiciis Ecclesiasticis," n. 772.

tions as the ordinary judges, he must take the oath that he will keep the secret, and that he will faithfully attend to his office and abstain from accepting gifts, in accordance with the precepts of Canons 1621–1624. He cannot act as judge in the same case (**Canon 1941**).

Commentators discuss the question whether the last phrase of Canon 1941 (he cannot act as judge) makes him absolutely incompetent to sit as judge, if he conducted the investigation in the criminal case; and whether, therefore, an Ordinary who personally conducted the investigation would be incompetent to be judge in the case. Noval [26] interprets "cannot" in the sense of "may not," but if, notwithstanding the prohibition the inquisitor acts as judge, he acts validly. Vermeersch-Creusen [27] rightly observe that the verb "nequit" expresses an inability to act. If the Ordinary has in person conducted the investigation, he should delegate a judge to try the case.

1855. It is left to the discretion of the Ordinary to decide when there are sufficient reasons to institute the judicial investigation. No attention is to be paid to denunciations which come from a manifest enemy or from a vile and unworthy person, or to anonymous letters destitute of the qualities and elements which might make the accusation probable (**Canon 1942**).

1856. The investigation must always be secret and conducted with the greatest caution, lest the rumor of the offense be spread thereby and the good reputation of any person be endangered (**Canon 1943**). For the purpose of ascertaining the truth, the investigator may summon persons whom he believes to have knowledge of the matter, and may interrogate them under oath to tell the truth and to maintain secrecy. In questioning them, the investigator shall, in so far as it is possible and the nature of the investigation permits, observe the precepts of Canons 1770–1781, which deal with the examination of witnesses in court (**Canon 1944**).

Before the investigator closes the investigation he may consult the diocesan prosecutor whenever he meets with a difficulty, and communicate to him the acts of the inquiry (**Canon 1945**).

1857. When the investigation has been completed, the inquisitor shall refer the acts of the investigation to the Ordinary,

[26] Noval, "De Judiciis Ecclesiasticis," n. 774.
[27] Vermeersch-Creusen, "Epitome," III, n. 264.

adding his own opinion. The Ordinary, or at his special mandate the judge of the Curia, shall by decree order:

(1) that, if the denunciation seems to lack a solid foundation, a declaration to that effect be issued and added to the acts of the investigation, which are to be preserved in the secret archives of the Curia;

(2) that, if there are indications of the offense but not sufficient proofs to institute a criminal trial, the acts be deposited in the said archives and the conduct of the suspected person be watched; and, if the Ordinary judges it advisable, the suspect shall be heard in the matter, and, if there is reason for doing so, admonished according to Canon 2307;

(3) that, if there are certain or at least probable and sufficient reasons for instituting the criminal trial, the accused be summoned to appear, and the procedure be conducted according to the following Canons (**Canon 1946**).

Chapter III

OF THE REBUKE OF THE OFFENDER

1858. If the accused when questioned confesses his offense, the Ordinary may employ the judicial rebuke instead of criminal procedure in all cases except those (cfr. Canon 1948) in which the law does not admit rebuke (**Canon 1947**).

1859. Judicial rebuke is not admitted in the following cases:

(1) in offenses which entail excommunication reserved to the Holy See in a most special or in a special manner (*specialissimo vel speciali modo*), the deprivation of a benefice, infamy, deposition, or degradation;

(2) when there is question of issuing a declaratory sentence of a so-called vindicative penalty or of a censure to which one has become liable by the offense. (The reason is that, when one has incurred a penalty *ferendæ sententiæ,* the ecclesiastical judge is not free to determine the penalty at his discretion, but is bound by the law to declare that the offender has incurred the penalty specified in law);

(3) when the Ordinary deems a judicial rebuke insufficient to repair the scandal and satisfy justice (**Canon 1948**).

1860. The judicial rebuke may be employed once or twice, but not a third time against the same offender (in the same

offense). Wherefore, if the offender after the second rebuke commits the same offense, criminal procedure must be instituted, or, if begun, continued according to the form of procedure outlined in Canons 1954–1959 (**Canon 1949**).

Provided Canons 1947–1948 are observed, the Ordinary may employ the judicial rebuke, not only before the criminal trial has commenced but also afterwards until the closing of the case. In the latter instance the trial is suspended, unless it has to be resumed because the rebuke brought no results—i.e., because the offender after a second rebuke again committed the same offense (**Canon 1950**).

1861. The rebuke may be employed also in cases in which a party instituted action against the offender for reason of injury suffered from his offense. In this case the Ordinary may, if the parties consent, determine the question of damages according to the rules of equity. If the Ordinary believes that the question of damages cannot easily be determined under the rules of equity, he may administer the rebuke to provide for the reparation of scandal and the amendment of the offender, and remit the civil suit as to damages to the court to be decided by civil trial (**Canon 1951**).

1862. The judicial rebuke must as a rule contain, not only salutary admonitions, but also some appropriate remedies or prescriptions of penances or good works, which serve to make public reparation for the violation of law or for scandal. The salutary remedies, penances, and good works to be imposed on the delinquent must be milder and lighter than those which could and should have been inflicted by judicial sentence if the criminal trial had taken place (**Canon 1952**). The rebuke is considered to have been useless, if the offender refuses to accept the remedies, penances and good works imposed on him, or, after accepting the same, does not comply with them (**Canon 1953**).

1863. If the rebuke has proved useless, the prosecutor may be ordered by the bishop (cfr. Canon 1954) to begin—or continue, as the case may be—the criminal procedure. Canon 1949 stated that the rebuke may be employed twice, but it supposes that the rebuke brought the desired results at least in so far as the offender made an effort and performed the imposed penances. If thereafter, through weakness, he failed again in the same kind of offense, he may receive the judicial rebuke a second

time. If, however, an offender shows no good will, and refuses either to accept the penances imposed in the rebuke or to perform them, criminal procedure may and ordinarily ought to be instituted against him.

Chapter IV

OF THE CRIMINAL PROSECUTION AND THE SUMMONS OF THE OFFENDER

1864. If the judicial rebuke be either insufficient to repair scandal and satisfy justice, or cannot be employed because the offender denies that he is guilty, or if the rebuke has been given but proved useless, the bishop or the judge of the Curia by special mandate of the bishop shall give orders that the acts of the investigation be submitted to the prosecutor (**Canon 1954**). The prosecutor shall at once draw up the bill of accusation, and present it to the judge in accordance with the rules of the First Section of Book IV (**Canon 1955**).

1865. In more serious offenses the Ordinary may, after consultation with the prosecutor, forbid the exercise of the sacred ministry or any other ecclesiastical office and the public reception of Holy Communion (cfr. Canon 2222), if he believes that the accused would otherwise scandalize the faithful (**Canon 1956**). If the judge believes that the accused might intimidate or bribe the witnesses, or hinder the course of justice in any other way, he may after consultation with the prosecutor demand by court order that the accused leave a certain town or parish for a time, or that he retire to a specified place and stay there under special surveillance (**Canon 1957**).

These decrees of the Ordinary or of the judge cannot be issued unless the accused has been summoned and has appeared or refused to appear, and he must be summoned whether these provisional decrees are to be issued after his first appearance in court or summons, or later on in the course of the trial. Against these decrees no appeal or recourse is granted (**Canon 1958**).

With regard to the rest of the procedure in criminal cases, the rules stated in the First Section (On trials in general) of Book IV are to be followed. In the application of penalties the laws of Book V must be observed (**Canon 1959**).

Because of the difficulty of enforcing the judgment, criminal actions are very rarely instituted in the ecclesiastical court, at least against lay persons, even where the offense is a purely ecclesiastical offense. In the first place, it would be difficult for an ecclesiastical court to place an offender under arrest, for the law of the United States does not permit private persons to restrain the liberty of its citizens, and before the law of the states the ecclesiastical authorities are merely private persons. Furthermore, if the ecclesiastical court condemns a person, it has no means of enforcing its sentence, except in so far as it can deny to the condemned persons those rights and privileges which they obtain by membership in the church. The secular courts view the relation of the members of a church towards the authorities of the church as a relation based on an implied contract or agreement to submit themselves to the rules and regulations of the church which they have joined. The United States Supreme Court said in the case of Watson v. Jones (80 U. S., 13 Wall.): "Whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them. . . . It is of the essence of these religious unions and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." Supreme Courts of various states and scholars in law have tried to ascertain the basis for the decision of the U. S. Supreme Court in the case of Watson v. Jones, for, under the law of the United States, the various churches are merely private organizations of private citizens, and, inasmuch as valuable rights of citizens are concerned in the actions against members of a church by the church tribunals, it is difficult to understand how the courts of the United States can refuse to review the decisions of the ecclesiastical courts in cases where valuable rights of a citizen are at stake (cfr. Zollmann, "American Civil Church Law," 210). Some Supreme Courts of individual states have interpreted the decision of the United States Supreme Court in Watson v. Jones as applying only to questions of

church discipline, dogmatic and moral teaching, conduct of its members in harmony with that teaching, and discipline and expulsion of members, but, whenever property rights and other legal rights of citizens generally have been concerned in the cases before the ecclesiastical tribunals, the courts have not hesitated to review the decisions of the ecclesiastical courts brought to the civil courts by the aggrieved church members.

TITLE XX

OF MATRIMONIAL CASES

Chapter I

OF THE COMPETENT FORUM

1866. Matrimonial cases between baptized persons belong by proper and exclusive right to the ecclesiastical judge (**Canon 1960**).[27a] Since the matrimonial state is created by an agreement which between Christians is at the same time a Sacrament, the Church claims that the marriage of Christians, in so far as its validity and licitness is concerned, is withdrawn by the law of Christ from the jurisdiction of the civil authority. The State as a rule cares nothing for the sacramental character of the agreement by which the marital state is created, and claims and exercises jurisdiction over marriage, whether of Christians or the unbaptized. The conflict between the Church and the State is one of difference of religious principle and is unavoidable, for the State has no right to demand that the Church change her religious principles, and the Church can neither change her principles nor persuade the civil governments to adopt her belief.

Cases which concern the marriage of Christians are by the law of Christ committed to the exclusive jurisdiction of the authorities of the Church. Consequently, a Catholic who brings an action in the civil courts on any question concerning the marriage bond or the obligation inherent in the marital state without the permission of the competent ecclesiastical authority, offends not only against the law of the Church, but also against the law of Christ. The question arises whether a Catholic judge and a Catholic lawyer may try divorce cases in the civil courts,

[27a] Complete marriage process published by Holy See, cfr. App. III, 77, last paragraph.

and whether a Catholic may sue for divorce to obtain the civil benefits of a divorce.

In the first place, it is quite certain that a Catholic has a right to defend himself, and to employ a Catholic lawyer for the defence, if the other party institutes an action in the civil court concerning his marriage, for he has a right to protect his interests, no matter how they are attacked. In other cases, as we said in commenting on Canon 1131 (cfr. Vol. I, n. 1173), the Church has not given a general answer which would cover all questions of Catholics taking an active part in marriage cases before the civil tribunals. The Fathers of the Third Plenary Council of Baltimore (*Acta et Decreta,* n. 124) state that it is a most grievous sin for Catholics to petition a divorce from the civil magistrate, and consequently it would be wrong for an attorney to petition it for them. The proper course for Catholics who have a good and valid reason why their marriage may be dissolved by declaration of the ecclesiastical court or by dispensation of the Holy See, or who have a valid reason for separation, is to submit their case to the ecclesiastical authorities, and, after the Church has either dissolved the marriage bond, or declared the marriage null and void, or has granted a separation, the Church will also allow them to sue for divorce or separation, as the case may be, in the civil court to make effective the rights which the Church has granted them in the ecclesiastical court.

The question whether a Catholic judge or a Catholic lawyer may act in divorce and separation cases which have not first been submitted to the Church, is to be decided on the principles of coöperation in the sins of others. De Becker, who discusses the question thoroughly (*De Sponsalibus et Matrimonio,* 426–437), says that the authors are much divided on the fundamental principle at the bottom of this controversy—namely, whether the law of the state empowering the civil courts to grant divorces, limited (separation) or absolute (*a vinculo*), is intrinsically evil or not. If it is, there can be no doubt that active coöperation in acting on that law is impossible without committing sin. The same author states that there are equally good authorities on either side, and he is of the opinion that the difficulties and hardships caused to Catholic judges and lawyers in their official or professional career by refusing to act in

divorce cases is sufficiently grave to permit their coöperation. No intelligent man who has the welfare of the public at heart, whether clergyman or layman, fails to see and deplores the harm that is wrought by the divorce laws, but it is nothing more than a pretended jurisdiction over the marriage of Christians arising from a misconception of the nature of marriage on the part of the civil legislators. They can at most legislate on the civil consequences of a marriage of Christians; its validity and licitness does not depend on their law, and the divorces granted under the secular law cannot free the consciences of Christians from the observance of the law of Christ and His Church. They may at most declare that they will not prosecute a person for the violation of the duties incurred by marriage, if he separates from his spouse or attempts another marriage. If then an attorney asks for and a judge grants a divorce, the one can ask for and the other grant only so much as the civil authorities can concede; the decision of the court cannot affect the obligations of conscience, nor are the civil legislators, as a rule, interested in the obligations of conscience of a citizen. There does not seem to be anything intrinsically wrong in the divorce action of a judge or an attorney.

1867. Cases concerning the mere civil consequences of marriage belong exclusively to the civil court, if they are brought to court as principal actions (cfr. Canon 1016); but, if they are incidental or accessory to a case on the validity or licitness of marriage, the ecclesiastical judge is competent to try and decide these cases (**Canon 1961**).

1868. Matrimonial cases of the supreme heads of states, of their sons and daughters, and of persons who have the immediate right of succession as heads of states (cfr. Canon 1557), shall be tried by that Sacred Congregation, or Tribunal, or special Committee which the Supreme Pontiff will delegate in each individual case. Cases of dispensation from unconsummated valid marriage shall be tried by the Sacred Congregation of the Sacraments, and cases of the Pauline Privilege by the Sacred Congregation of the Holy Office (**Canon 1962**). Wherefore, no inferior judge can institute proceedings in cases of dispensation from valid unconsummated marriage, unless the Holy See has authorized him to proceed. If, however, a competent judge has by his own authority conducted a trial to

establish nullity of marriage from the impediment of impotency (which the diocesan court is competent to judge except in cases of the heads of states, etc.), and in the course of the trial not impotency but non-consummation of the marriage was proved, he shall stop proceedings and forward all the acts of the case to the Sacred Congregation of the Sacraments, and the Sacred Congregation may use the proofs for the purpose of issuing sentence on the non-consummation of the marriage (**Canon 1963**).

1869. In other matrimonial cases the judge competent to try the case is the judge of the place in which the marriage was celebrated, or of the place in which the defendant—or, in the case of a Catholic and a non-Catholic, of the place in which the Catholic—has a domicile or a quasi-domicile (**Canon 1964**).

Canon 247 states that the Holy Office has exclusive jurisdiction as to the impediments of disparity of cult and mixed religion. Canon 1990 seems to modify the general rule of Canon 247, in so far as it permits the Ordinary to declare the invalidity of a marriage which was rendered void through the impediment of disparity of cult, if the non-baptism of one party and the baptism of the other can be proved by authentic document.

1870. In marriage cases where the aid of the Church is sought by a party to get a declaration of nullity of a previous marriage, the pastor or an assistant priest is approached by the party who desires to regain liberty in the eyes of the Church; usually a civil divorce has preceded. The priest who gets the facts of the case must ascertain the court which is competent to try the case. Canon 1964 states that the judge of the place where the marriage was contracted is competent. A declaration of the Committee for the Authentic Interpretation of the Code ruled that the judge of the place where a contract was concluded, or is to be executed, is competent only in case the defendant stays in the place of contract at the time the suit is brought.[28] That declaration was issued to interpret Canon 1565, which deals with contracts generally, and it does not seem probable that Canon 1565 and its authoritative declaration refer to marriage, for, though marriage is a contract, it is a very special kind of a contract which does not come under the general rules of contract, but has its own special and detailed regulations

[28] Cfr. App. III, 77.

appropriate to its singular character. The diocesan court of the place of marriage seems therefore competent to try the case, though the defendant is not staying in that diocese.

If the party who brings the suit does not wish to approach the judge of the place where the marriage was contracted, he is at liberty to go to another competent judge. Who else is competent? If both parties are Catholics, the case must be presented to the judge of the diocese where the *defendant* has a domicile or quasi-domicile. The party who approaches the priest to ask him to take up the case for him (or her), is the plaintiff, and the other party is the defendant. If the defendant has a domicile or quasi-domicile in another diocese, the case must be taken to the court of that diocese, for the plaintiff must go to the court of the defendant. If one party is Catholic and the other non-Catholic, the case must go to the court of the diocese where the Catholic party has a domicile or quasi-domicile. Usually the Catholic party approaches the priest about the marriage case, and, if that party has a domicile or a quasi-domicile in the diocese where he (she) approaches the priest, the case can go to the court of that diocese. If a married woman has not been separated legitimately from her husband, she cannot have a domicile of her own, but she can have a quasi-domicile, which, if her husband is a non-Catholic, entitles her to bring the suit in that place.

1871. When both parties are Catholics, a difficulty arises to determine the competent court if the man has abandoned the woman and gone to a distant place. Must she follow the defendant into the court where he has his domicile or quasi-domicile? The inconvenience is considerable, and, if the place where the marriage was contracted is also far distant, it is a question of practical importance to determine whether in that case the woman is excused from going to the court of the place where her husband now resides. If the man is deserted by the wife, the case is not difficult, for, since the wife keeps the domicile of her husband, he can bring suit in the diocese where he lives. Can the wife do the same when she is maliciously deserted of her husband? The Committee for the Authentic Interpretation of the Code has declared that a wife, who is maliciously deserted by her husband, cannot bring suit in the place of her own quasi-domicile, but must follow the husband's domicile or

quasi-domicile to bring suit there. The same Committee decided that a Catholic wife who is not legitimately separated (see Canons 1129–1131 on separation) from her non-Catholic husband, may sue him either in the court of her quasi-domicile or in the court of her husband's domicile, because she participates in the domicile of her husband.[29] This latter declaration is a logical application of the principle that a wife who has not been legitimately separated from her husband necessarily retains the domicile of her husband, and, he being a non-Catholic, Canon 1964 rules that the domicile or the quasi-domicile of the Catholic party is the competent court. Now the wife in the case has both the necessary domicile of her husband, and she has a quasi-domicile of her own; wherefore, either place is competent to try the case.

1872. If a marriage is attacked because of lack of consent, the judge should first of all try by timely admonitions to induce the party whose consent is said to have been wanting to renew the consent. If the marriage is attacked because of the lack of the necessary form of marriage (i.e., because it was not contracted before an authorized priest and two witnesses), or because of a diriment impediment from which a dispensation can be and is usually given, the judge should endeavor to induce the parties to contract marriage in the legitimate form, or to ask for a dispensation from the impediment (**Canon 1965**).

Chapter II

OF THE CONSTITUTION OF THE TRIBUNAL

1873. In the regular trial of marriage cases which involve the bond of marriage three judges must adjudicate (cfr. Canon 1576). Canon 1990 specifies the cases in which the local Ordinary alone can declare the nullity of a marriage. In the process instituted for the purpose of proving the non-consummation of a Christian marriage and thus obtaining a dispensation from the marriage bond, one judge only is to take the evidence, and that judge cannot act in the case unless he is delegated by the Holy See (cfr. Canon 1963); if in a case of impotency that impediment is not proved, but the proofs indicate non-consummation of the marriage, the judge must refer the case to the Sacred Congregation of the Sacraments (**Canon 1966**).

[29] Cfr. App. III, 77.

1874. In all cases which deal with the nullity of marriage, or with the proof of non-consummation of a marriage and the reasons for dispensation from the bond of a valid non-consummated marriage, the *defensor vinculi* (cfr. Canon 1586) must be summoned (**Canon 1967**).

The duties of the *defensor vinculi* in marriage cases are as follows:

(1) he must be present at the examination of the parties and of the witnesses and experts. He must present to the judge the interrogatory (or questions) in a closed and sealed envelope, and the judge may open the envelope only in the very course of the examination of the parties and witnesses, and must then and there propose the questions to them. He must suggest to the judge new questions which arise in the examination;

(2) he must study the articles or points proposed by the parties, and if necessary contradict them, and he must examine the documents exhibited by the parties;

(3) he must make a written defence against the nullity of the marriage claimed by the parties, and try to prove the validity or the consummation of the marriage, and present everything that he thinks useful for the purpose of upholding the marriage which is attacked (**Canon 1968**).

1875. The *defensor vinculi* has the right:

(1) always and at any stage of the trial to inspect the acts of the case, even though they have not yet been published; to ask for more time to complete his written defence or other writings in defence of the validity of the marriage, which time is to be granted to him at the prudent discretion of the judge;

(2) to be informed of all the proofs and allegations in such a manner that he has an opportunity to prepare his objections;

(3) to request that other witnesses be summoned or that the same be again subjected to an examination, though the taking of evidence has been completed and the evidence published, and to submit new evidence and objections;

(4) to demand that other acts which he suggests may be drafted, unless the tribunal by unanimous vote decides against him (**Canon 1969**). The *defensor vinculi* enters into all trials of marriage cases which deal with the validity of marriage, not only in the cases which are to be discussed in the form of a complete and formal trial, but also in the cases enumerated in

Canon 1990, in which the Ordinary can issue the declaration of nullity without a formal trial. The only case in which he does not enter is where a Catholic contracted marriage outside the Church, which case will be spoken of under Canon 1990.

The outline of the procedure in matrimonial cases in the Code does not enter into all the details of the required formalities, because many of them are already supposed to be known from the general laws on ecclesiastical trials (e.g., that in all court proceedings a notary must be present who acts as clerk of the court, that the witnesses must be sworn before the taking of testimony, that the parties may be represented by proxies and attorneys, that the precepts of the Code on proxies and attorneys apply also in marriage cases, etc.). However, the Church in trials on annulment of marriage wants above all the truth of the facts in the case, and, though the formalities of court procedure are ordained for the purpose of furthering the ascertainment of truth and preventing fraud, still the ecclesiastical procedure in marriage cases permits the violation of certain rules of the ordinary procedure of trials in order to obtain greater certainty of the truth of the facts. This is apparent from the extensive powers which the Code confers upon the *defensor vinculi* (cfr. Canons 1968–1969), and which are far beyond the rights of either plaintiff or defendant in ordinary trials. The position of the *defensor vinculi* is neither that of plaintiff nor defendant, but his position is altogether singular: he fights to uphold the validity of the marriage, irrespective of plaintiff or defendant, by trying to show the deficiency of the proofs put in evidence for the nullity of the marriage and by proofs for its validity through witnesses and all other available means. Another indication that the Church is more anxious for the ascertainment of the truth in marriage cases than for the observance of the ordinary formalities of trials, is the fact that blood-relations and relations by marriage are admitted as witnesses (cfr. Canon 1974), and that the cases on the validity of marriage never become irrevocably adjudged, but may be reopened whenever new and weighty proofs are discovered.[29a]

[29a] The dispensation from a valid but non-consummated marriage is reserved to the Holy See, and therefore also the procedure to prove non-consummation of a marriage. For an outline of the procedure recently published by the Holy See, cfr. App. III, 81.

Chapter III

OF THE RIGHT TO ATTACK MARRIAGE AND PETITION FOR A DISPENSATION FROM UNCONSUMMATED MARRIAGE

1876. The collegiate tribunal cannot try or decide any marriage case, unless a regular accusation or legitimately made petition has preceded (**Canon 1970**). The following persons are capable of attacking a marriage: (1) the married parties in all cases of separation and of nullity, unless they themselves were the cause of the impediment; (2) the prosecutor in impediments public of their very nature. All other persons, even blood-relations, have no right to attack a marriage; they can merely denounce the invalidity of a marriage to the Ordinary or to the prosecutor (**Canon 1971**).

The Code speaks of a collegiate tribunal, for cases concerning the invalidity of marriage cannot be tried otherwise than by a collegiate tribunal of at least three judges (cfr. Canon 1576), with the exception of the cases specified in Canon 1990. If the parties have, through fraud or other gravely culpable act, caused the invalidity of their marriage, they have no right to become plaintiffs in the case against their marriage; the same applies to other matrimonial cases (e.g., separation for adultery, cruelty, etc.). What is to be done if both parties knew before the marriage of an invalidating impediment, but concealed it from the priest and married, and afterwards do not want to rectify the marriage? May they at least denounce their marriage to the prosecutor under the general provision that all persons who know of the invalidity of a marriage may denounce it to the prosecutor? It seems that they may do so. It is not certain what is meant by the words of the Code that the parties cannot be plaintiffs against the marriage, if they were the *causa impedimenti.* It seems reasonable that they be excluded from acting as plaintiffs, if they by their own fault caused the invalidity of the marriage; but whether that is meant by the *causa impedimenti,* or reference is made only to cases where the parties created the impediment (e.g., by force and fear), is not certain.[30]

1877. Canon 1971 states that, in the case of impediments public of their very nature (*natura sua publica*), the prosecutor

[30] Noval, "De Processibus," n. 850; Augustine, "Commentary," V, 417; Wernz-Vidal, "Jus Canonicum," V, n. 698. Cfr. App. III, 78.

can in virtue of his office attack the marriage. What impediments are public of their nature? Vermeersch-Creusen defines them as "impediments which are based on a fact which of its nature can be proved in court, because as a rule witnesses or documents are not wanting, and which is not of itself a defaming impediment." [31] Noval would add impediments occult of their nature (e.g., impotency, force and fear), if they had actually become known to others so that they could be proved in court.[32] Wernz-Vidal explains impediments to be public of their nature if they arise: (1) out of a fact which must take place publicly (e.g., ordination, religious profession); (2) facts of which there is public record (e.g., age, consanguinity, etc.); (3) facts which can be proved by the testimony of a qualified witness (e.g., the impediment of *ligamen* by the testimony of the priest who witnessed the marriage).[33]

1878. A marriage which has not been attacked during the lifetime of both parties, is after the death of one or both presumed to have been valid, and no proof against this assumption is admitted except when this question arises incidentally—for example, in connexion with rights of inheritance or the care and maintenance of children (**Canon 1972**).

1879. The married parties alone have the right to ask for a dispensation from unconsummated valid marriage (**Canon 1973**).

Chapter IV

OF PROOFS

ARTICLE I—OF WITNESSES

1880. Although blood-relations and relations by marriage in every degree of the direct line and in the first degree of the collateral line are generally declared incapable of being witnesses (cfr. Canon 1757), they are permitted to testify in marriage cases (**Canon 1974**). This exception in favor of matrimonial cases is probably based on the fact that they are better acquainted with the facts concerning the case, and that frequently no other witnesses would be available, if the relations were excluded from testifying. For the rest, the ecclesiastical judge must weigh all depositions of witnesses and determine

[31] "Epitome," III, n. 286.

[32] "De Processibus," n. 850.

[33] "Jus Canonicum," V, n. 147. Non-Catholics cannot act as plaintiffs, cfr. App. III, 78. For recent Decree on right of parties to sue when they caused the invalidity, cfr. App. III, 78, last paragraph.

from the circumstances whether their testimony is prompted by selfish motives, or is for any other reasons untrustworthy.

1881. In cases of impotency or of non-consummation of marriage, unless the impotency or non-consummation is proved with certainty from other sources, each of the married parties must present the witnesses known as the *testes septimæ manus.* They are to be taken from the blood-relations or relations by marriage, or if such cannot be had, from neighbors of good repute, or others who are well acquainted with the parties, and who can testify to the probity of the parties and especially to their veracity concerning the matter in controversy. The judge can also *ex officio* call additional witnesses, because the public welfare (cfr. Canon 1759) is concerned in the matrimonial status of the parties. The testimony of the *septima manus* is a proof of credibility which gives additional strength to the depositions of the parties; it has not the force of full proof, unless it is supported by other circumstantial evidence (**Canon 1975**).

These witnesses were called *septimæ manus,* because according to the law of the Decretals they had to be seven in number.[34] Avanzini remarks that the Sacred Congregation does not insist on the precise number of seven witnesses,[35] and the Code does not specify the number of these auxiliary witnesses. As they do not testify about the facts of the case but rather about the character of the parties, the Code states that they do not fully prove the case. The Holy Office declared that the *testimonium septimæ manus* is not required in all marriage cases, but only in those which concern the non-consummation of marriage.[36]

1882. As the Code does not give any special rules with regard to proofs by witnesses or documents in marriage cases, the general rules on evidence apply. The priest to whom a party first relates his case with the request that it be submitted to the bishop, usually has to assist the party in procuring the evidence. The diocesan court first of all determines whether it is, according to the rules of law, competent in the case; it then summons the defendant, or, if he refuses to answer the summons, declares him in contempt of court. The names of the witnesses and their addresses are to be given to the court, which then summons

[34] *Decretal. Greg. IX,* cc. 5 and 7, *De Frigidis et Mal.,* lib. V, tit. 15.
[35] *Acta S. Sedis,* VI, 515.
[36] February 16, 1894; Gasparri, "De Matrimonio," II, n. 1486.

them. An affidavit made by a witness as to some fact in the case does not suffice, for a witness must testify in person, and, if he cannot without great difficulty come to court, the judge may appoint a priest to take the testimony (cfr. Canon 1770). Though the Code does not state anything on the point, it may be deduced from general principles that the court may appoint a priest to take the testimony of non-Catholic witnesses who refuse to appear in court. As the marriage cases which deal with the marriage bond are not merely private affairs, but concern the public welfare, the judge must use all available means to ascertain the truth. In cases which concern private interests only, the parties have to procure the evidence in their favor, the court as such being not interested, but, in affairs which are of vital interest to the public welfare, the court is actively interested.

ARTICLE II—OF BODILY INSPECTION

1883. In cases of impotency or non-consummation of marriage, the bodily inspection of both or of one of the parties, as the case may be, must be instituted by means of experts, unless it is apparent from the circumstances that the inspection is useless (**Canon 1976**). In the choice of the experts the precepts of Canons 1792–1805 are to be observed, besides the rules laid down in the following Canons (**Canon 1977**).

1884. Persons who have privately inspected the married parties in reference to the fact on which the petition for the declaration of the nullity or the non-consummation of the marriage is based, are not to be admitted as experts; they may, however, be introduced as witnesses (**Canon 1978**).

1885. For the inspection of the man, two experienced physicians must be appointed *ex officio* (i.e., not by the parties, but by the court at its own choice). For the inspection of the woman two midwives who have legitimate testimonials of knowledge are to be appointed *ex officio,* unless the woman prefers to be examined by two physicians to be appointed *ex officio,* or the Ordinary believes it necessary to employ the physicians. The inspection of the woman must be performed according to the rules of Christian modesty and in the presence of a respectable matron to be appointed *ex officio* (**Canon 1979**).

1886. The inspection of the woman by the midwives or ex-

perts is to be performed by each one separately; each physician or midwife shall make a separate report of the examination within the time fixed by the judge. The judge may, if he deems it advisable, submit the reports of the midwives to the examination of a skilled physician (**Canon 1980**). After the report has been made, the judge shall question the experts, midwives and matron according to the questions prepared by the *defensor vinculi*, which they must answer under oath (**Canon 1981**).

1887. In cases of lack of consent for reason of insanity, the opinion of experts is also required. These shall, if the case demands it, examine the insane person and the actions which arouse suspicion of insanity according to the rules of science. Moreover, the experts who formerly visited the patient must be heard as witnesses (**Canon 1982**).

Chapter V

OF THE PUBLICATION OF THE PROCESS, CLOSING OF THE EVIDENCE, AND SENTENCE

1888. After the publication of the process the parties may yet present new witnesses on the various points of the case, provided the precepts of Canon 1786 are observed. If, however, witnesses who have already been examined are to be questioned again on the same points on which they were previously examined, precautions must be taken against collusion and bribery (cfr. Canon 1781), and the *defensor vinculi* has the right to raise proper objections (**Canon 1983**).

1889. The *defensor vinculi* has the right to be heard last in the written and oral defence, in the proofs as well as in the petitions and the answer to the arguments. Wherefore, the tribunal shall not render a final sentence before the *defensor vinculi* has been asked and has declared that he has nothing further to propose or to investigate. If the *defensor vinculi* has proposed nothing to the court before the final day fixed by the judge for that purpose, it is presumed that he has nothing further to lay before the court (**Canon 1984**).

1890. In cases which are to establish the non-consummation of a valid marriage for the purpose of obtaining a dispensation from the bond of marriage, the judge who has been delegated by the Holy See to conduct the investigation shall neither pub-

lish the process nor pronounce sentence (cfr. 1963) on the non-consummation of the marriage or the reasons for the dispensation, but he shall forward all the acts of the case together with the written opinion of the bishop and of the *defensor vinculi* to the Apostolic See (**Canon 1985**).

Chapter VI

OF APPEALS

1891. The *defensor vinculi* must within the legitimate term appeal to the superior court from a first sentence which declared the nullity of a marriage; if he neglects his duty, he shall be forced to do so by the authority of the judge (**Canon 1986**).

1892. After a second sentence which has confirmed the first sentence of nullity and from which the *defensor vinculi* of the court of appeal conscientiously believes no appeal should be made, the parties have the right to contract a new marriage as soon as ten days (cfr. Canon 1877) have elapsed after the declaration of the sentence (**Canon 1987**).

1893. The local Ordinary has the duty to see that an annotation regarding the declaration of nullity is made in the baptismal and matrimonial records where the marriage was recorded (**Canon 1988**).

1894. Since the sentences in matrimonial cases never become irrevocably adjudged (*res judicata*), the cases may be reopened at any time when new arguments are at hand, but Canon 1903 warns the judge not to reopen a case in which two uniform decisions had been given by the courts unless new and weighty arguments are offered (**Canon 1989**).[36a]

Chapter VII

OF THE CASES EXCEPTED FROM THE FORMALITIES OF AN ORDINARY TRIAL

1895. If an impediment of disparity of cult, orders, solemn vow of chastity, valid marriage bond, consanguinity, affinity, or spiritual relationship rendered a marriage invalid, and the existence of the impediment can be proved from a certain and authentic document which cannot be contradicted or objected to, and there is the same certainty that no dispensation from

[36a] Cfr. App. III, 79, a and b.

these impediments was granted, the above-mentioned formalities of a trial need not be observed. After consultation with the *defensor vinculi* and the summoning of the parties, the Ordinary may declare the nullity of the marriage (**Canon 1990**).

1896. As to a marriage made invalid because of the non-observance of the *canonical form* of marriage, the Committee for the Authentic Interpretation of the Code has declared as follows: (1) if after the promulgation of the "Ne Temere," or in places subject to the Tridentine Law of the Constitution "Tametsi," two Catholics (2) or, if under the same circumstances a Catholic and a non-Catholic contracted marriage either before an heretical minister or before the civil magistrate, (3) or, if two apostates from the Catholic faith married each other either before a non-Catholic minister of religion or before a civil magistrate, and the Catholic party after having obtained a civil divorce returns penitently to the Church and wishes to contract marriage with a Catholic before the Church, no matrimonial trial is necessary nor the intervention of the *defensor vinculi,* but the case may be decided by the Ordinary or by the pastor after consultation with the Ordinary, provided the facts are ascertained by careful investigation.[37]

1897. In the cases mentioned in Canon 1990 the proof of the impediment must be furnished by a document which is beyond suspicion both as to its authenticity and veracity. There is little difficulty, as a rule, in proving the reception of sacred orders, solemn religious profession, an existing marriage, consanguinity, affinity, and spiritual relationship, for these facts are ordinarily provable from public records. The impediment of disparity of cult creates some difficulty, for, while the baptism of one party can as a rule be proved from the public records (unless, through carelessness of the minister, no record was made or through accident the record has been destroyed), it is difficult to understand how the non-baptism of the other party can be proved by document. Wherefore, Vlaming justly remarks that only positive facts can be proved by records or documents, while a negative fact (viz., non-reception of baptism) has to be proved by other proofs and legitimate presumptions.[38]

1898. If marriage was contracted before a priest who had

[37] Cfr. App. III, 80. Concerning marriage of two non-Catholics, cfr. App. III, 80, last paragraph.

[38] "Prælect. Jur. Matr.," II, n. 803.

no authorization to witness marriages in the parish where the marriage took place, neither the Code nor the above-cited declaration of the Committee excepts the case from the ordinary form of matrimonial trials. Nevertheless, the invalidity is apparent as soon as it is proved that the priest was not an authorized witness of the marriage, and further trial seems superfluous. Wherefore, some commentators [39] hold that the case should be treated like the cases excepted from the form of ordinary trials. In cases where the lack of authorization is very evident, the priest's interference is actually no more than the attempt of a civil magistrate to witness the marriage of a Catholic; where the case is complicated and depends on various circumstances (e.g., whether the priest was legitimately appointed as pastor, whether he is legitimately taking the place of the pastor in the latter's absence, illness, etc.), an ordinary trial should be instituted.

Appeal from the Declaration of Nullity

1899. In the excepted cases (cfr. Canon 1990), the bishop may declare the nullity of the marriage in summary proceedings, but, if the *defensor vinculi* has good reasons to maintain that there is no certainty about the impediments, or that probably a dispensation from them has been obtained, he is obliged to appeal to the judge of the court of the second instance to whom the acts of the case must be forwarded, and who is to be reminded by written notice that the case in question is exempted from the formalities of an ordinary trial (**Canon 1991**).

1900. The judge of the second instance shall decide the case without being obliged to call anyone else than the *defensor vinculi* into the case. His duty is either to confirm the sentence of the first Ordinary or to order that the case be tried in the form of an ordinary matrimonial trial, in which event he shall remand the case to the court of the first instance (**Canon 1992**).

[39] Wernz-Vidal, "Jus Matrimoniale," V, n. 705; Vlaming, "Prælect. Jur. Matr.," II, n. 804.

TITLE XXI

OF CASES AGAINST SACRED ORDINATION

1901. In cases in which the obligations contracted by sacred ordination or the validity itself of the sacred ordination is attacked, the bill of complaint must be submitted to the Sacred Congregation of the Sacraments; or, if the ordination is attacked on account of a substantial defect in the sacred rite, to the Sacred Congregation of the Holy Office. The Sacred Congregation (of the Sacraments or of the Holy Office) shall decide whether the case is to be discussed in the form of an ordinary trial or in an informal manner—the so-called *via disciplinaris*. If the Sacred Congregation decides on a formal trial, it shall remand the case to the tribunal of the diocese which was the proper diocese of the cleric at the time of the ordination in question, except in the case in which the orders are attacked on account of a substantial defect in the sacred rite, in which event the case is to be remanded to the tribunal of the diocese in which the ordination took place. The appeal in the case is governed by Canons 1594–1601. If the Sacred Congregation decides to discuss the case in the disciplinary way, it orders the competent tribunal of the diocese to institute the process for the information of the Sacred Congregation, and, after this has been submitted, it renders the decision (**Canon 1993**).

1902. The right to attack the validity of sacred ordination rests equally with the cleric and the Ordinary to whom the cleric is subject, or in whose diocese he was ordained. If a cleric believes that he has not contracted the obligations annexed to sacred orders (e.g., because he was constrained by grave fear to receive sacred orders, cfr. Canon 214), the cleric alone can petition the Holy See for a declaration of the nullity of the obligations (**Canon 1994**).

1903. All things which are to be observed in ecclesiastical trials, as outlined in the First Section of Part I, Book IV, and the special regulations laid down in the process of matrimonial cases, are with due adaptation (*congrua congruis referendo*) to be applied to cases against sacred ordination (**Canon 1995**). The *defensor vinculi sacræ ordinationis* enjoys the same rights

and has the same duties as the *defensor vinculi matrimonii* (**Canon 1996**).

1904. Though an action was instituted merely for the purpose of being freed from the obligations arising from sacred orders, not against the validity of the ordination, the cleric is nevertheless to be forbidden *ad cautelam* to exercise the sacred orders (**Canon 1997**).

1905. In order that a cleric may be freed from the obligations which are attached to sacred orders, two uniform sentences are required. The appeal in these cases is governed by Canons 1986–1989 on appeal in matrimonial cases (**Canon 1998**).

Canon 1993 states that cases concerning the validity or the freedom from the obligations of sacred orders are reserved to the Holy See. The Holy See decides first whether the case is to be tried according to regular court procedure or in the so-called disciplinary form. If ordinary court procedure is to be instituted, the Holy See remands the case to the respective diocesan court. In cases which attack the validity of sacred orders, there must be a collegiate tribunal of at least three judges (cfr. Canon 1576). If the first sentence decrees the nullity of the ordination or the freedom from the obligations attached to sacred orders, the *defensor vinculi sacræ ordinationis* must appeal to the superior court—usually the archbishop's court, but, if the trial in the first instance was held in the archbishop's court, that diocesan court which the archbishop has once for all chosen as a court of appeal.[39a]

[39a] By Decree of June 9, 1931, the Sacred Congregation of the Sacraments published the procedure to be followed in canonical trials involving the validity of sacred orders (*Acta Ap. Sedis*, XXIII, 457–492).

PART TWO

OF CAUSES OF THE BEATIFICATION OF SERVANTS OF GOD AND THE CANONIZATION OF THE BEATIFIED

1906. Causes of beatification of servants of God and the canonization of the beatified are reserved exclusively to the judgment of the Holy See. In accordance with Canon 253, the Congregation of Sacred Rites alone is competent in these cases. The local Ordinaries by their own right can do those things only which are explicitly committed to them in the following Canons (**Canon 1999**).[1]

These causes can proceed in two ways namely: either by the ordinary way of non-cult (wherein no public cult or veneration is claimed), or by the extraordinary way of the exceptional case or cult. If the cause proceeds in the ordinary way, it must be proved before the discussion on the virtues of a servant of God that no public cult was given to him, or, if given by an abuse (i.e., without authorization of the ecclesiastical authorities), was stopped. If the cause proceeds in the extraordinary way, one endeavors to prove that a servant of God is in possession of public and ecclesiastical cult (**Canon 2000**).

The causes of martyrs, whether conducted in the ordinary or extraordinary way, must not be presented jointly, but each cause must proceed separately, unless the martyrs suffered in the same persecution and in the same place. The entire process and all discussions which are prescribed in these cases from the introduction of the cause to its termination shall deal with each martyr individually (**Canon 2001**).

In the Canons which follow, the term "Ordinaries" does not include the vicar-general, unless he has a special mandate (**Canon 2002**).

[1] *Codex pro Postulatoribus* (3rd ed.), *Cura Postulationis O.F.M.*

The veneration of saintly men and women by the Church began with the martyrs of the faith. The Catholic people were convinced that those who had sacrificed their lives for Christ were glorified by God and crowned with the crown of honor and power becoming the faithful children of God. A peculiar feature of the early veneration of the martyrs is that it was not universal throughout the Church, but confined to the diocese or ecclesiastical province where the martyrs had made their supreme sacrifice. The Blessed Mother of Christ and the Holy Apostles were, however, venerated universally because of the prominent rôle they held in the Church. After the cessation of the hostilities of the Roman Empire against the Church, the practice developed of honoring publicly in church the memory of Christian men and women who had become renowned for exceptional sanctity of life and zeal for the honor of God. They were called "Confessors." St. Martin, Bishop of Tours (died 397), was soon after his death honored as a saint. In Rome Pope Symmachus (498–514) built a church in honor of St. Silvester and St. Martin, both Confessors. The veneration of the saintly confessors remained mostly local, just as the cult of the holy martyrs, though at Rome as well as at other churches saints from other dioceses and countries were gradually inserted in the liturgical books. The Roman Calendar of saints was in the course of time adopted by many dioceses and countries and the rapid spread of the Franciscan Order over all Europe in the thirteenth century was instrumental in introducing the Roman liturgy into many places, since that Order used the liturgical books of the Roman liturgy.

The canonization of saintly persons by the supreme authority of the Church in the formal manner in which it was done later on, was not in vogue in the early history of the Church. Nevertheless, the individual bishops and the provincial councils controlled the public religious worship, and without their authority no person could be honored as a saint in the sacred liturgy. The first instance of an official canonization by the Supreme Pontiff is that of St. Ulrich, Bishop of Augsburg, by Pope John XV, in a Roman Synod in 993. Canonization, however, was not reserved to the Holy See until Pope Alexander III, in the year 1171, forbade honoring with ecclesiastical cult any person without the sanction of the Holy See. Pope Urban VIII, by

decree of the Sacred Congregation of Rites, March 12, 1631 (*Collectanea de Prop. Fide,* I, n. 67) forbade the bishops and all other authorities inferior to the Supreme Pontiff to allow the public veneration of any deceased person, and to take any official action in the matter of investigating the lives of persons reputed to have been exceptionally virtuous or of approving the cult rendered to them by spontaneous demonstrations of the people, without first submitting the matter to the Apostolic See to which alone the pronouncement of beatification or canonization is reserved. The Constitution "Cœlestis Hierusalem" of Pope Urban VIII, July 5, 1634 (Gasparri, *Fontes Cod. Jur. Can.,* I, 402) repeated the same precepts as the above decree of the Sacred Congregation of Rites and, among other points, decreed that when people make votive offerings to a church in the form of tablets, picture, etc., claiming that they have obtained a favor through the invocation of a servant of God who has not yet been placed in the catalogue of saints or blessed by the Church, the rector of the church where the offering is made should accept it and take down the testimony of the donor and others concerning the fact which is claimed to be miraculous and then report the matter to the local Ordinary, and if he approves of it, the tablet or other offering together with the testimony is to be preserved in a secure place outside the church so that they may be examined in a future cause of beatification or canonization, if it please God that such step be taken later on.

The Code of Canon Law confirms the former law, stating expressly in Canon 1999 that the causes of beatification and canonization are reserved exclusively to the Apostolic See. The Code distinguishes between the ordinary process of beatification and the extraordinary process. In the first, the holiness of life or the fact of martyrdom and the miracles wrought at the invocation of a servant of God are the principal points to be proved. It must also be proved that no public cult has been bestowed on the servant of God) i.e., no cult has been approved by the bishop), and that public veneration started by the people has been stopped by the bishop. The extraordinary process of beatification can take place only with regard to servants of God whose public veneration had been practised for a hundred years or more prior to the issuance of the Constitution of Pope Urban

VIII (July 5, 1634) and after the pontificate of Pope Alexander III, 1181 (cfr. Canon 2125).

The ordinary process of beatification is divided into a preliminary or preparatory process and the final process (also called Apostolic process). The Code gives authority to the local Ordinaries to institute the preliminary process which comprises: (1) the gathering of the writings of the servant of God; (2) testimony of the reputation for holiness of life, of his virtues generally, of the fact of martyrdom, of miracles claimed to have been wrought at his invocation; (3) testimony that no public cult has been bestowed on the servant of God by permission of the bishop, and that spontaneous public veneration by the people has been suppressed by the bishop. The acts of the preliminary process must be forwarded to the Sacred Congregation of Rites which has to review each of the three acts of the process separately. After this, the Sacred Congregation decides in an ordinary and full meeting whether the cause is to be recommended to the Supreme Pontiff for the institution of the Apostolic process. If they decide to recommend the case to the Holy Father, and he approves of it, he issues the *litteræ remissoriales* by which five judges in the diocese from which the case was submitted are appointed with authority to institute the Apostolic process.

The delegated judges who conduct the Apostolic process must establish: (1) the reputation concerning holiness of life, miracles or martyrdom; (2) the fact of the practice in a heroic degree of the virtues, the fact of each miracle alleged in the preliminary process, and, in case of martyrs, the fact of martyrdom and its cause. The acts of the process are forwarded to the Sacred Congregation which examines the validity of the acts and with previous permission obtained from the Supreme Pontiff renders a decision on the validity of the Apostolic process. Following this decision, the evidence of the virtues, or the martyrdom and its cause, and the evidence on the miracles are submitted to scrutiny three times by three different committees of the Sacred Congregation: (1) the *congregatio antepræparatoria,* (2) the *congregatio præparatoria,* (3) the *congregatio generalis.* If the first, i.e., the proofs of the virtues or the martyrdom, has successfully passed the three stages, a decree is issued that the heroic degree of the virtues or the martyrdom has been proved. After this decree, the proof of the miracles has to go through the three committees,

and, if they are found to be true miracles, a decree or decision to that effect is issued. Then the discussion in presence of the Supreme Pontiff follows on the question whether one may safely proceed to the beatification of the servant of God. The Holy Father alone decides this question after having heard the opinion of the Consultors and Cardinals of the Sacred Congregation of Rites. Finally, the decree of beatification is issued by the Supreme Pontiff.

TITLE XXII

OF SOME PERSONS WHO TAKE PART IN THESE PROCESSES

Chapter I

OF THE ACTOR AND POSTULATOR

1907. Any individual member, or any legitimate body of the faithful, has the right to petition that a cause be taken up by the competent tribunal. If the petition is admitted by the legitimate and competent authority of the Church, the petitioner thereby obtains the right to promote the cause legitimately and conduct it to the end. The local Ordinary can either *ex officio* or upon request draw up the cause of beatification (**Canon 2003**). With reference to his faculties, see below, Canons 2038–2064.

The *actor* (or petitioner) may act either in person or through a proxy legitimately appointed for the purpose; women may act only through a proxy. The person who conducts the case in the competent court is called the *postulator*. Whether he acts in his own name or in the name of another, the postulator must be a secular or religious priest, who has a fixed residence in the city of Rome (**Canon 2004**).

1908. There may be only one postulator in each case. Nobody except the postulator has the right to appoint by legitimate mandate substitutes, who are called vice-postulators (**Canon 2005**). The postulator as well as the vice-postulators, if they act in the case by mandate of another, must exhibit their mandate to the court, before they are allowed to exercise their office. The mandate of the postulator must be drawn up in accordance with Canon 1659 (cfr. above, n. 1633), and it is

not considered legitimate unless it has been accepted by the Sacred Congregation, and been entered in its acts. The mandate of the vice-postulators must be inspected and accepted by the court, in which they exercise their office (**Canon 2006**).

1909. The postulator has the following duties:

(1) to conduct the cause before the competent judges;

(2) to make the necessary expenditures. However, money collected from the faithful for the expenses of the cause must be administered in accordance with the instructions of the Apostolic See;

(3) to give to the court the names of the witnesses and the documents;

(4) to draw up and submit to the *promotor fidei* the points on which the witnesses in the processes are to be interrogated (**Canon 2007**).

The mandate of the postulator who acts in the name of another expires for the same reasons as the mandate of other proxies expires in law (**Canon 2008**). Canons 1663–1664 discuss the various ways in which such mandates are terminated.

Chapter II

OF THE CARDINAL RELATOR, PROMOTERS OF THE FAITH AND SUB-PROMOTERS

1910. In the causes which are tried by the Sacred Congregation, one of the Cardinals of the Congregation shall be designated by the Supreme Pontiff to act as *relator* or *ponens*. His office demands that he devote special attention to the cause, and report in the plenary or ordinary meeting of the Sacred Congregation all things which seem to favor or prejudice the cause (**Canon 2009**).

1911. The promoter of the faith must take part in every proceeding, and he must always be summoned in accordance with the precept of Canon 1587. The promoter of the faith in the Sacred Congregation of Rites has the title of General Promoter of the Faith, and the Assessor of the same Sacred Congregation who assists him has the title of General Sub-Promoter of the Faith (**Canon 2010**).

Outside the Sacred Congregation, a promoter of the faith may be appointed either for all causes or for a particular one

only. The General Promoter of the Faith and the General Sub-Promoter are chosen by the Supreme Pontiff. Promoters of the faith in the diocesan courts are nominated by the General Promoter, if they are to act in an Apostolic process, and have then the title of sub-promoters; if they act in the proceedings which the local Ordinaries may institute of their own right, they shall be appointed by the Ordinaries before they issue the decree spoken of in Canon 2043 (**Canon 2011**).

1912. The promoter of the faith shall draw up plain, purely historical interrogatories, which shall be framed, not to elicit a certain answer from the witness, but in such a manner that the truth may be ascertained also regarding the points proposed by the postulator. The interrogatories are to be submitted to the judges under obligation of secrecy. The promoter must, moreover, insist that the witnesses be summoned *ex officio*, and must offer proper objections to their testimony. The judge also can *ex officio* call witnesses who were not asked for or are even objected to by the promoter, but must inform the promoter of his action (**Canon 2012**).

Chapter III

OF THE NOTARY, CHANCELLOR AND ATTORNEYS

1913. In all processes, whether conducted by the Apostolic See or by the local Ordinary in his own right, a notary or actuary must be present. The notary in the Sacred Congregation must be one of the Prothonotaries *de numero participantium* (**Canon 2013**).

Religious cannot validly exercise the office of a notary, except in case of necessity, and in the causes of their own organization they are always excluded (**Canon 2014**).

In processes conducted by the local Ordinary outside the City of Rome, the notary of the Curia may discharge the office of notary. In the City of Rome the Prothonotary of the Sacred Congregation exercises the office of notary, and in his absence the notary of the Vicariate of the City (**Canon 2015**).

1914. An assistant may be assigned to the notary (the so-called *adjunctus*). This assistant helps in comparing copies with the original acts and transcripts with the autographic documents preserved in libraries, archives, etc. (**Canon 2016**).

The assistant notary and the Chancellor of the Sacred Congregation must be priests of unblemished character and above all reproach; the chancellor should also be a Doctor of Canon Law (**Canon 2017**).

1915. The attorneys and proxies in the causes of beautification and canonization conducted by the Sacred Congregation must have obtained the degree of Doctor of Canon Law and at least the Licentiate in Sacred Theology, and they must have made an apprenticeship with some one of the attorneys of the same Sacred Congregation or with the General Sub-Promoter of the Faith; the attorneys must in addition have the legitimate title of attorney of the Roman Rota (**Canon 2018**).

TITLE XXIII

OF THE PROOFS TO BE SUPPLIED IN THESE PROCESSES

Chapter I

OF PROOFS IN GENERAL

1916. In these causes the proofs must be altogether complete, and none are to be admitted except those which are established by means of witnesses or documents (**Canon 2019**).

To prove that cult was never offered to a servant of God, at least four witnesses are necessary. To prove the reputation for virtues, martyrdom and miracles, eight witnesses at least are required who may be singular in the sense of the so-called circumstantial singularity (i.e., various witnesses who witnessed different circumstances of the same fact); besides, at least two witnesses must be summoned *ex officio*. To prove virtues or martyrdom, eye-witnesses and simultaneous witnesses are required; historical material can at most strengthen the evidence (**Canon 2020,** §§ 1–3).

1917. If in the Apostolic process there are witnesses who testify as to what they heard from eyewitnesses and in the informative process there are eyewitnesses, all these can be combined in the line of proof. If, however, there are eyewitnesses in the informative process and in the Apostolic process there are only witnesses who testify what they heard from others who

themselves had knowledge from hearsay, their testimony has only a more or less corroborative force, as determined by the discretion of the judges. In such a case the process can proceed to the discussion of the miracles only if from the combined testimony of all the witnesses such proof is derived as to convince a prudent man who is judging a grave affair of the truth of the facts (**Canon 2020,** §§ 4–5).

1918. In ancient causes proceeding by the way of non-cult in which there are no eyewitnesses nor witnesses who obtained their knowledge from eyewitnesses, and in causes which proceed by the way of the exceptional case (i.e., cult of the servant of God), the virtues and martyrdom can be proved by hearsay witnesses and from public reputation which constitutes an unbroken tradition from hearsay and by contemporary documents or monuments recognized as authentic. Finally, miracles must always be proved by eyewitnesses and simultaneous (*contestes*) witnesses (**Canon 2020,** §§ 6–7).

The *contestes,* which we render "simultaneous witnesses," are defined by Vermeersch-Creusen [2] as witnesses "whose testimony is in conformity with the testimony of other witnesses, whether they are eyewitnesses or heard the facts directly from trustworthy eyewitnesses."

1919. Immemorial cult is proved by authentic memorials which antedate by one hundred years or came into existence in the century prior to the Constitution of Pope Urban VIII, promulgated in the year 1634, provided they relate facts which happened at least one hundred years previously, and are supported by an uninterrupted tradition of the people (**Canon 2021**). A cult of very long standing (*longissimi temporis*) permitted by the Apostolic See is proved by coëval documents (**Canon 2022**).

Chapter II

OF WITNESSES AND EXPERTS

1920. In processes of beatification all the faithful except those specified in Canon 2027, nn. 1–3, are bound, even though not summoned as witnesses, to bring to the notice of the Church those things which in their opinion disprove the virtue, or

[2] *Epitome,* III (2nd ed., 1925), n. 314, ad 3.

miracles, or martyrdom of a servant of God (**Canon 2023**). As witnesses must be summoned by the promoter of the faith, though not proposed by the postulator, especially all those who lived or associated with the servant of God (**Canon 2024**).

1921. Unless they already know that they are to be summoned as witnesses, all persons mentioned in Canons 2023–2024 must inform their proper Ordinary by letter whether they have been associated with the servant of God, and briefly explain whether they know of some peculiar fact which should be revealed, and what it is; the Ordinary shall forward these letters to the promoter of the faith.

Religious men and women shall seal these letters, and transmit them immediately and directly to the Ordinary or to the promoter of the faith, or shall hand them to the confessor, who shall see that they are forwarded as soon as possible to the Ordinary or to the promoter of the faith.

Illiterate persons shall explain the matter to the pastor, who shall report it to the Ordinary or the promoter of the faith (**Canon 2025**).

1922. Religious superiors are under grave obligation to see that all their subjects who are obliged to testify do so, but shall beware of urging them either directly or indirectly to testify in one manner rather than in another (**Canon 2026**). Thus, superiors are strictly forbidden to influence their subjects to conceal the faults of a servant of God and speak only of his good characteristics, or *vice versa*.

Qualifications of Witnesses

1923. Blood-relations, relations by marriage, servants, heretics and infidels may be admitted as witnesses.

The following may not be admitted as witnesses:

(1) the confessor in accordance with Canon 1757, n. 3, b;

(2) the postulator, the attorney or procurator in the cause during the time of their office; if they have altogether withdrawn from their office, they may be admitted, but their testimony has merely corroborative force;

(3) persons who at any time held the office of judge in the case (**Canon 2027**).

1924. Physicians, who gave medical care to the person on

whom a miracle is said to have been performed, must be introduced as witnesses when there is question of miracles. If they refuse to appear in court, the judge shall procure at least a written and sworn statement about the illness and its course which is to be inserted in the acts of the cause, or he shall have their opinion taken by a person appointed for that purpose, and that person shall afterwards be examined (**Canon 2028**). In their testimony, the witnesses must state the reasons for their personal knowledge of the things they assert; otherwise their testimony shall not be considered as of any value (**Canon 2029**). To prove the reputation for sanctity or the martyrdom of a servant of God who belonged to some religious organization, it is necessary that at least one-half of the witnesses be persons outside such organization (**Canon 2030**).

Experts

1925. When there is need of the testimony of experts, the following rules shall be observed:

(1) there must be at least two experts, who shall be unknown to each other, and they shall investigate as pointed out in n. 4 of this Canon;

(2) they shall be appointed either by the court by a plurality of votes after consultation with the promoter of the faith, or, if they are to act for the Sacred Congregation, by the Cardinal *Ponens* after consultation with the Promoter General of the Faith. Those who have been witnesses in the cause must be always excluded from acting as experts;

(3) the postulator shall not be informed of the persons chosen as experts, and the experts shall keep their appointment secret;

(4) the experts shall make their investigations individually and separately, unless the judge for a good reason, and with the assent of the promoter of the faith, allows them to institute their investigations jointly;

(5) each expert shall give a written report of his individual investigation; then they shall be separately questioned, even though they conducted the investigation jointly (**Canon 2031**).

Chapter III

OF THE DOCUMENTS TO BE SUBMITTED IN THE PROCESS

1926. The documents on which the postulator relies must be submitted to the tribunal in complete form. The tribunal may also demand from the postulator other documents which in the judgment of the court may serve to reveal the truth (**Canon 2032**).

1927. Extrajudicial testimonies made in writing, whether by persons whom the postulator had presented to the court to testify on the virtues or the martyrdom of a servant of God, or by other persons whom the postulator proposed as witnesses, may not (even though presented in the processes) be counted among the documents which in the judgment of the sanctity or the martyrdom of a servant of God have the force of proof. Nor do eulogies at the funeral and necrologies written or printed immediately after the death of a servant of God constitute legitimate proof. Much less do the testimonies of men, no matter how illustrious, prove anything regarding the virtues and works of a servant of God, if they were written, not spontaneously, but at the request of friends during the lifetime of the servant of God (**Canon 2033**). Persons who exhibit documents must establish their origin and authenticity (**Canon 2034**).

1928. Histories do not have the value of documents, unless they are based on documents which have been presented in the process. If some men of great authority have made use of documents now exhibited in the cause and have approved of them, their testimony can be adduced merely to confirm the authenticity and authority of the documents (**Canon 2035**).

Historical documents, whether in manuscript or printed form, by which the postulator endeavors to prove the virtues of a servant of God or the antiquity and uninterrupted continuation of the cult given to him, shall be inserted in the acts of the process, forwarded to the Sacred Congregation, and examined by experts. If, however, any of these documents be kept in a library or in archives from which they cannot be removed, a copy or a photoprint shall be made with the written testimony of the notary of the tribunal as to its authenticity. If this also cannot be done, the matter shall be referred to the

Sacred Congregation, who shall appoint experts to examine the documents in the place where they are preserved (**Canon 2036**).

TITLE XXIV

OF THE PROCESS OF BEATIFICATION OF SERVANTS OF GOD BY THE WAY OF NON-CULT

1929. The judges, promoter of the faith and sub-promoters, the notary and his assistant, who participate either in the processes conducted by the authority of the local Ordinaries or in those conducted by delegates of the Holy See, must at the beginning of every process take an oath according to the formula prescribed by the Sacred Congregation that they shall discharge their office faithfully, shall keep the secret until the publication of the process, and shall not accept donations of any kind. The Ordinary, though not acting as judge, is nevertheless bound to take the oath to keep secrecy. Besides the oath of secrecy, the witnesses must before examination take the oath to tell the truth, and, after they have given testimony, the oath as to the truth of the statements made: no witness is excepted nor dispensed from these oaths. Experts, interpreters, revisers, and copyists must take the oath to discharge their offices well, before they enter on their duties, and, after they have done their work, they must affirm under oath that they have faithfully done their duty. The messenger also shall take the oath that he will perform his work faithfully. The postulators and vice-postulators must take the *juramentum calumniæ*—that is, swear that they shall speak the truth throughout the entire process and shall not act fraudulently in any manner. In processes before the Sacred Congregation, its own proper law as to the taking of oaths shall be observed (**Canon 2037**).

Chapter I

OF THE PROCESSES CONDUCTED BY THE LOCAL ORDINARY IN HIS OWN RIGHT

1930. Before the cause of beatification of a servant of God can be presented to the Holy See, legal proof must be furnished of the purity of the doctrine in his writings, of his reputation for sanctity, virtues and miracles or martyrdom, of the absence

of any obstacle which might peremptorily bar his cause, and finally that no public cult has been paid to him. If, therefore, the Ordinary judges that the petition should be admitted, he shall at the petition of the postulator: (1) examine the writings of the servant of God; (2) start the informative process regarding the reputation for sanctity, virtues in general or martyrdom, and the cause of the martyrdom or miracles; (3) institute the process to prove non-cult (**Canon 2038**).

1931. The competence to institute the foregoing proceedings is vested in the Ordinary of the place in which the servant of God died, or where the miracles took place; however, an Ordinary who is related to the servant of God (*de gente*) may not in person conduct the process. If the process regarding the reputation for sanctity or martyrdom was completed thirty years before, but the cause was for any reason interrupted before its legitimate introduction before the Holy See, the same Ordinaries or their successors have the right to institute the informative process over the continuation of the reputation for sanctity or martyrdom (**Canon 2039**).

1932. The tribunal consists of the president, who is the Ordinary himself or a priest delegated for this purpose. If the Ordinary delegates a priest to preside, he must also appoint two other judges from among the synodal examiners. The Ordinary shall designate the president of the tribunal by decree, whether he himself fills that position or appoints a delegate with two associate judges, and in the same decree he shall appoint the promoter of the faith and the notary (**Canon 2040**).

1933. The sessions of the court for the taking of oaths and the examination of witnesses shall, in so far as possible, be held during the daytime and in a sacred place. After every session, the acts of the cause must be closed and sealed with the seal of the judge, and may not be opened again until the judge has in the next session examined his seal and found it entire and intact; if the seal has been tampered with, the judge shall refer the matter to the Sacred Congregation (**Canon 2041**).

ARTICLE I.—OF THE EXAMINATION OF THE WRITINGS OF A SERVANT OF GOD

1934. By the term "writings" are meant not only unpublished works of a servant of God, but also those which already have been printed; also sermons, letters, diaries, autobiographies,

and everything that he wrote personally or through another (**Canon 2042**).

1935. The Ordinary shall issue a public edict which is to be read, if possible, in all parishes of his diocese or published in another appropriate way, commanding all persons who have writings of the servant of God to forward them to the court, and recalling and emphasizing the precepts of Canons 2023–2025. If the servant of God belonged to a religious organization, the edict must be published also in every house of such organization, and the superiors are obliged under grave obligation to see that this publication takes place, with explicit mention of the precept of Canon 2025, § 2, and that all who are in possession of writings shall forward them to the court. The promoter of the faith has the duty to insist on the publication of the edict also in other places, where there is hope that somebody may be found who has some writing of the servant of God (**Canon 2043**).

1936. The Ordinary shall examine carefully the writings of a servant of God, not only when requested by the postulator of the cause, but also *ex officio*. If some writings are found in another diocese, the judge shall request the Ordinary of such diocese to examine them personally as required by law, and forward them to him together with the acts of the examination (**Canon 2044**).

If some of the possessors desire to retain autograph writings, the notary shall have an authentic copy made of these writings, and forwarded to the Sacred Congregation together with the process. With regard to writings preserved in libraries and archives, the precepts of Canon 2036 are to be observed (**Canon 2045**).

The notary shall make a careful record of the number and nature of the writings and of the acts bearing on their examination. These acts must moreover be subscribed by the Ordinary or his delegate and by the promoter of the faith, and must be closed with the seal of the Ordinary (**Canon 2046**).

1937. The postulator shall take an oath before the Ordinary that he will diligently examine the writings, and after the examination that he has truly done so. If the servant of God is a woman who belonged to some religious organization, the supreme head of the organization or the abbess of a monastery

shall take the oath that she has diligently examined the writings, that she has given to the court all the writings of the servant of God in her possession, and that she does not know of any other writings of the servant of God that are possessed by any one of her subjects or any other persons (**Canon 2047**).

1938. If the cause of a martyr is in question, the examination of his writings may take place even after a committee for the introduction of the cause before the Sacred Congregation has been appointed; the Promoter General of the Faith shall give instructions in reference to this examination (**Canon 2048**).

ARTICLE II.—OF THE INFORMATIVE PROCESS

1939. The informative process is conducted by the Ordinaries, and, if it has not been begun within thirty years after the death of the servant of God, no proceedings may be instituted before it is proved that there has been no fraud or malice or culpable negligence (**Canon 2049**).

1940. In the examination of the witnesses on the reputation for sanctity, martyrdom, and miracles of the servant of God, the precepts of Canons 2019–2020 shall be observed. It is not necessary that the virtues, martyrdom, and miracles be specifically established: it suffices if the general fame or reputation of the servant of God is proved to be spontaneous, not artificial or created by human endeavor, but coming from righteous and serious-minded persons, and that it was continuous, increased in the course of time, and was still in vogue with the greater portion of the people. After the general questions have been put to the witnesses as outlined by Canon 1774, the judge shall first of all ask them what knowledge they possess of the life, virtues, miracles, or martyrdom of the servant of God, how they obtained this knowledge, and whether they know that there is public rumor concerning these things; after this, they shall be questioned according to the interrogatories prepared by the promoter of the faith and on the points or articles offered by the postulator (**Canon 2050**).

1941. The informative process cannot be closed until after the promoter of the faith has examined all the letters sent to him in accordance with Canon 2025, and has ascertained that the persons spoken of in Canons 2023–2025 have been examined (**Canon 2051**).

When the court is of the opinion that all proofs, both from the examination of witnesses and the exhibition of documents, have been collected, and all the writings of the servant of God which could be procured are now in the acts of the case, it shall after consultation with the promoter of the faith warn the postulator that, if he has anything else to present, he must do so within a fixed period of time. After the lapse of that period, the process is closed (**Canon 2052**). After this, the notary at the command of the judge, provided the promoter of the faith does not object, shall publish the process, which shall be given to a scribe or secretary appointed by the court to make a copy of the same (**Canon 2053**). The copy of the process—or the *transumptum,* as it is called—shall be written by hand like the original acts (**Canon 2054**).

1942. The copy shall be compared with the original by the notary and his assistant in the presence of one of the judges and of the promoter of the faith; after the collating of the copy, the notary, judge and promoter of the faith shall sign and seal it in proof of its authenticity (**Canon 2055**). The original acts are closed and sealed and deposited in the archives of the Curia; they may never be opened without permission of the Apostolic See. The copy is enclosed and sealed with the seal of the Ordinary, and the notary shall prepare in duplicate a document testifying to this act, one copy being sent to Rome, and the other preserved in the archives of the Curia (**Canon 2056**).

ARTICLE III.—OF THE PROCESS REGARDING NON-CULT

1943. Besides the witnesses produced by the postulator, the court shall introduce two other witnesses *ex officio,* and question all whether public cult was ever given to the servant of God (**Canon 2057**).

The court shall, moreover, go to and carefully inspect the tomb of the servant of God, the room in which he lived or where he died, and other places, if there be any, where one might justly suspect to find signs of public cult (**Canon 2058**). If in the course of the process there appear serious indications that public cult has in the meantime been given to the servant of God, the promoter of the faith shall insist that further investigations be made into this matter (**Canon 2059**). The court

shall decide by its sentence whether or not cult has been given to the servant of God (**Canon 2060**).

ARTICLE IV.—OF TRANSMISSION TO THE SACRED CONGREGATION OF THE PROCESS ON THE WRITINGS OF THE SERVANT OF GOD, OF THE INFORMATIVE PROCESS, AND OF THE PROCESS OF NON-CULT

1944. As soon as the Ordinary has finished the examination of the writings, he shall forward these writings to Rome, together with an account of the proceedings taken in the examination, called the *processiculus diligentiarum* [231] (**Canon 2061**). If after the examination of the writings of a servant of God other writings are discovered in the course of the process, these must be forwarded at once to the Sacred Congregation, and no further steps in the case can be taken until these writings have been inspected (**Canon 2062**).

1945. The copy of the informative process (cfr. Canons 2053–2056) shall be given by the Ordinary to the postulator for transmission to the Sacred Congregation. Together with the copy he shall also send a letter from the judges to the Sacred Congregation and a letter from the diocesan promoter of the faith to the Promoter General of the Faith, so that the Sacred Congregation may be informed both as to the credence to be given to the witnesses and of the legitimate execution of all the acts. The Ordinary shall also forward a description of the form of the seal with which he sealed the copy, or a copy of the seal (**Canon 2063**).

The acts of the process regarding non-cult shall, upon its completion, be also transmitted by the Ordinary to the Sacred Congregation through the postulator (**Canon 2064**).

Chapter II

OF THE INTRODUCTION OF THE CAUSE BEFORE THE SACRED CONGREGATION

ARTICLE I.—OF THE REVIEW OF THE WRITINGS

1946. As soon as the writings of a servant of God have been received at Rome, they are to be examined. The Sacred Congregation, however, shall make proper investigation whether there are perhaps other writings, besides those exhibited, to be

231 That is, a juridical report of the ways and means employed in the examination of the writings.

found in the hands of private individuals or in public archives (**Canon 2065**).

In every individual cause the examiners of the writings shall be selected by the Cardinal *Ponens* after consultation with the Promoter General of the Faith, and their names shall be kept secret. To this office priests shall be appointed who are at least Doctors of Theology; or, if priests of a religious organization are appointed, they must have received an equivalent title (**Canon 2066**). The writings of the servant of God shall be given to the chosen examiners by the secretary, and every writing shall be examined by two examiners, who are unknown to each other. If the writings are very numerous, there is no objection to dividing them into several parts, and having each part examined by distinct examiners (**Canon 2067**).

1947. The opinion of the examiners must state whether there is anything in these writings which contravenes faith or good morals, and point out in a general way what characteristics, virtuous habits or defects of the servant of God are suggested by his writings. This opinion shall be given in writing and supported with arguments and reasons (**Canon 2068**). If the opinions of the examiners differ, a third examiner shall be appointed in the manner specified in Canon 2066, and he shall examine the writings in the same manner as the other examiners (**Canon 2069**).

1948. The Promoter General of the Faith shall propose for the discussion of the Cardinals of the Sacred Congregation any objections that he may have taken from the writings of the servant of God and the report of the examiners (**Canon 2070**). If it should be proved with certainty that the writings of the servant of God contain something which is not in absolute harmony with the faith, or something which at the present time might scandalize the faithful, the Roman Pontiff, after taking the vote of the Cardinals on the question and considering all circumstances of the case, shall decide whether the cause is to proceed (**Canon 2071**). A favorable decision of the Supreme Pontiff does not imply an approbation of the writings, and does not prevent the Promoter General of the Faith and the consultors from proposing objections from the writings in the discussion of the virtues of the servant of God (**Canon 2072**).

ARTICLE II.—OF THE DISCUSSION ON THE INFORMATIVE PROCESS

1949. When the informative process drawn up by the Ordinary is received in Rome, the integrity of the seals is examined by the Prothonotary of the Sacred Congregation, and, if there is no objection (e.g., that the parcel has been tampered with in transit), the Roman Pontiff issues a special decree to the effect that the package be opened before the Cardinal Prefect of the Sacred Congregation, who then gives the acts of the process to the chancellor to be copied (**Canon 2073**). If necessary, the Cardinal *Ponens* shall have a translation of the process made by an approved translator in Rome, and shall afterwards submit the translation to an examiner (**Canon 2074**).

The copy of the process sent by the Ordinary shall be preserved in the archives of the Sacred Congregation, and the copy shall after proper legal endorsement by the chancellor be given by him to the postulator (**Canon 2075**).

1950. The attorney and the procurator shall make a summary of the processes and a brief based on this summary. To the summary must be added the affidavit of the Sub-Promoter General of the Faith to the effect that the summary agrees with the acts submitted to the Sacred Congregation (**Canon 2076**).

1951. Letters from persons occupying distinguished ecclesiastical or civil offices or from organizations, in which the Supreme Pontiff is petitioned to take up the cause of the beatification of a servant of God, may be usefully presented, provided they have been written spontaneously and are based on personal knowledge (**Canon 2077**).

1952. If, after the examination of these writings, it is decreed that the cause may proceed, the Promoter General of the Faith shall draw up his objections to the introduction of the cause, and the attorney of the cause shall reply to these objections (**Canon 2078**). The Promoter General of the Faith shall preface his objection to the introduction of the cause with a dispassionate and clear synopsis of the life of the servant of God. In preparing this synopsis, he shall use not only the documents contained in the summary of the attorney and procurator, but also other documents, if there are any which seem proper for the purpose (**Canon 2079**).

The objections and the answers shall be stated in brief and clear fashion, somewhat after the method of the scholastics, and

in accordance with the ancient customs of the Sacred Congregation (**Canon 2080**). Oral arguments, not only before the judges but also before all other persons who must vote on the case, are forbidden in this and in all succeeding stages of the case (**Canon 2081**).

1953. The judgment on the value of the informative process drawn up by the Ordinary regarding the reputation for sanctity or martyrdom and on the absence of every peremptory obstacle is rendered by the Cardinals assembled in ordinary meeting; the Cardinal *Ponens* states and proposes the doubt: Whether a commission is to be appointed for the introduction of the cause and for the purpose in question (**Canon 2082**). If the judgment of the Cardinals is favorable, the Holy Father shall be petitioned to appoint, if he pleases, a commission for the introduction of the cause. If the Holy Father appoints the commission, a decree concerning the affair is drawn up by the Sacred Congregation and promulgated (**Canon 2083**).

1954. After the decree for the introduction of the cause has been promulgated, the Ordinaries cannot take any further action in the cause without express permission of the Sacred Congregation. It is forbidden to honor with the title of "Venerable" a servant of God whose cause has been merely introduced, and the postulators must beware lest, on the occasion of the introduction of the cause, they do anything in honor of the servant of God which savors of public cult (**Canon 2084**).

ARTICLE III.—OF THE DISCUSSION OF THE PROCESS ON NON-CULT

1955. After the commission for the introduction of the cause has been appointed, the Cardinals shall in an ordinary meeting discuss the question whether the report submitted by the Ordinary to the effect that no cult has been given to the servant of God is to be confirmed. If the decision of the Cardinals should declare that cult has been given to the servant of God, they may at their discretion, and after weighing all the circumstances, suspend the cause until all signs of the forbidden cult have been removed, and obedience has been shown to this order (for removal of signs of cult) for a certain time to be fixed by the Cardinals (**Canon 2085**).

1956. If the Ordinary has not yet completed the process on non-cult before the introduction of the cause, this process is to

be instituted by authority of the Apostolic See. For this purpose the Promoter General of the Faith shall draw up interrogatories, which together with the remissorial letters spoken of in Canon 2087, shall be sent by the Sacred Congregation to judges designated by itself. If there is question of martyrs in whose case the Ordinary has omitted to institute the process of non-cult before the introduction of the cause, there shall be added to the remissorial letters for the conduct of the process on martyrdom and the cause of martyrdom a commission for the collection of proofs on non-cult, together with special interrogatories proposed by the Promoter General of the Faith (**Canon 2086**).

Chapter III

OF THE APOSTOLIC PROCESSES

ARTICLE I.—OF THE INSTITUTION OF THE APOSTOLIC PROCESS

1957. After the decree on non-cult has been issued, the so-called remissorial letters shall be asked of the Supreme Pontiff and forwarded by the Cardinal Prefect for the institution of the Apostolic process on the reputation for sanctity, miracles or martyrdom, and on the virtues and miracles in particular or on the martyrdom and its cause. These two processes shall be conducted separately, but the first may be omitted if the Cardinal Prefect and the Promoter General of the Faith do not deem it necessary or opportune to inquire again concerning the continuation of the reputation. If the committee for the introduction of the cause has been appointed, but the decree on non-cult has not yet been issued, and if there is danger that some of the eyewitnesses may in the meantime die, the remissorial letters may be issued immediately for the institution of the Apostolic process on the virtues and miracles in particular or on the martyrdom and its cause, *lest the proofs perish* (**Canon 2087**).

1958. The remissorial letters are to be addressed to at least five judges, who, if possible, should be men constituted in an ecclesiastical dignity. If the Ordinary is appointed as one of the judges, he shall act as president; otherwise, the president shall be appointed by the Sacred Congregation itself. It is proper that at least the president be not the same man who presided over the informative process. If the process is con-

cerned with the miracles, there should be appointed at least one expert (in addition to the judges), who shall be present at the sessions of the court and may request the judge to propose to the witness questions necessary for the greater clarification of the verbal testimony and facts (**Canon 2088**).

1959. To the remissorial letters shall be added special letters of the Promoter General of the Faith, in which he designates two sub-promoters to attend the process in his name (**Canon 2089**).

The Promoter General of the Faith shall prepare interrogatories on the objections raised in the introduction of the cause and on the testimonies received in the informative process in accordance with Canon 2050; also on the extrajudicial information which he deemed it necessary to procure (cfr. Canon 2079), even by enlisting the service of an expert if miracles were concerned (**Canon 2090**).

1960. The remissorial letters are to be given to the postulator of the cause, who shall have them forwarded to the delegated president of the court. At the same time the interrogatories shall be sent to one of the sub-promoters, and they shall remain sealed and be opened only in the act of the examination of witnesses to whom they are to be proposed (**Canon 2091**).

1961. Before they enter upon their office, the delegated judges shall exhibit the letters of delegation to the Ordinary, who is obliged to give them the aid of his authority (**Canon 2092**). After the receipt of the remissorial letters, the president of the court shall as soon as possible convoke the court, and shall in no case delay the convocation for more than three months, unless a just impediment intervenes, concerning which he shall within the same time inform the Sacred Congregation. The court shall in its first session choose a notary, an assistant notary, an expert, if the case calls for one, and a messenger, and the notary of the Curia shall draw up an attestation of this election (**Canon 2093**).

Though all to whom the remissorial letters are addressed may be present at every session of the Apostolic process, it suffices for the validity of the proceedings if the president and two judges—or, with the consent and in the absence of the president, three other judges—one of the sub-promoters of the faith, and the notary or his assistant be present (**Canon 2094**).

1962. The process must be finished within at least two years from the date of the opening of the letters. If, after the lapse of two years, the process has not been completed, it cannot be continued without the permission of the Apostolic See, and the Sacred Congregation shall be informed of the impediments which prevented the execution of the Apostolic mandate (**Canon 2095**).

Before the Apostolic process on the specific virtues of the servant of God is finished, the court shall perform a juridical inspection of the remains of the servant of God in accordance with the precepts of the remissorial letters (**Canon 2096**).

In the transcription of the acts, comparison with the originals, and transmission of the copy to Rome, the precepts of Canons 2054–2056 and 2063 regarding the informative process shall be observed. The process shall be presented to the Sacred Congregation, and opened and transcribed in accordance with the precepts of Canons 2073–2075 (**Canon 2097**).

ARTICLE II.—OF THE JUDGMENT ON THE VALIDITY OF THE APOSTOLIC PROCESS

1963. When the Apostolic process has been received by the Sacred Congregation, its validity must first of all be established, and at the same time the validity of the informative process is to be reëxamined (**Canon 2098**). Wherefore the attorney of the cause shall prepare the following before the discussion on the validity of the process: (1) information which proves from the documents of the process that all things were done in the process according to the rules of law; (2) objections against the validity made by the promoter general of the faith and the answers of the attorney, both drawn up in accordance with Canon 2080 (**Canon 2099**).

1964. For the judgment on the validity of the process, a meeting shall be held at which the following must be present: the Cardinal Prefect of the Sacred Congregation, the Cardinal *Ponens* and three other Cardinals of the same Sacred Congregation chosen by the Roman Pontiff, the Secretary, Prothonotary Apostolic, the Promoter General of the Faith and the Subpromoter. In the meeting the above-mentioned prelates give their vote under the direction of the Cardinal *Ponens*, and the Promoter General proposes objections, if he has any. After all things have been discussed, the Cardinals shall give their judg-

ment; if it is favorable and confirmed by the Supreme Pontiff, the decree on the validity of the process shall be drawn up (**Canon 2100**).

ARTICLE III.—OF THE JUDGMENT ON THE HEROIC CHARACTER OF THE VIRTUES IN PARTICULAR, OR ON THE MARTYRDOM AND ITS CAUSE

1965. The discussion of the virtues shall not be begun until after the lapse of fifty years from the death of a servant of God (**Canon 2101**). The heroism of the virtues or the martyrdom and its cause are to be discussed by three congregations: the *antepræparatoria, præparatoria,* and *generalis* (**Canon 2102**). The prelates, who are officials and consultors of the congregations, shall in each congregation give their vote in writing. After all the prelates and consultors have given their vote in the antepreparatory or in the preparatory congregation, each one may again declare, before the congregation is dissolved, that he retracts the vote which he has given. The result of each ballot shall be consigned to writing by the secretary, and shall be kept secret; the written votes, however, shall be given to the Promoter General of the Faith (**Canon 2103**).

In the causes of confessors, the following question must be discussed: whether there is certainty of the heroic degree of the theological virtues of faith, hope, love of God and of neighbor, and of the cardinal virtues of prudence, justice, temperance, fortitude, and of the virtues connected with the preceding in the case and with the effect in question; in the causes of martyrs, whether there is certainty of the martyrdom and its cause and of the signs or miracles in the case and with the effect in question (**Canon 2104**).

1966. The antepreparatory congregation meets in the presence of the Cardinal *Ponens* and the prelate officials and consultors (**Canon 2105**). For this congregation a report shall be prepared, consisting of the following: (1) a summary of the original process, which must exhibit the testimonies and documents in full; (2) a document drawn up by the attorney of the cause, in which he argues the heroism of the virtues, or the martyrdom and its cause, from the documents of the summary, and in which it shall be clearly stated what arguments are adduced as proofs strictly so-called, and what are added rather

to aid or strengthen the proofs; (3) a synopsis by the Promoter General of the Faith in accordance with Canon 2079; (4) objections of the Promoter General of the Faith and replies of the attorney; (5) the opinions written by the reviewers of the writings of the servant of God (**Canon 2106**).

If two-thirds of the members of the congregation have given a negative vote, the case shall not proceed from the antepreparatory to the preparatory congregation, unless, after the Cardinal Prefect has referred the matter to the Supreme Pontiff, the latter decides that the case should proceed (**Canon 2107**).

The preparatory congregation is to be attended by all Cardinals of the Sacred Congregation, with the assistance of the prelate officials and consultors (**Canon 2108**). The following documents are to be prepared: (1) difficulties raised by the Promoter General of the Faith; (2) difficulties which have been proposed by the consultors in their votes, if they do not appear negligible to the Promoter General; (3) replies of the attorney to the difficulties; (4) documents newly discovered either in favor of or against the cause, with summaries added thereto both in rebuttal and defence (**Canon 2109**).

In the preparatory congregation the Cardinals, after consultation with the consultors, decide whether the case shall proceed further. The Secretary and the Promoter General of the Faith, though not asked, may always speak for the purpose of clarifying the question and shedding more light on the facts (**Canon 2110**). After the discussion, the Cardinal Prefect shall submit the matter to the Supreme Pontiff, and inform him, not only of the results of the discussion, but also of the principal reasons or arguments advanced for or against the cause (**Canon 2111**).

1967. The General Congregation shall be held in presence of the Holy Father, and the Cardinals of the Sacred Congregation and the prelate officials and consultors shall also attend this meeting (**Canon 2112**). For the General Congregation the latest statement on the cause shall be prepared in accordance with Canon 2109, and in addition a brief *ex officio* report of all things which have previously been done in the cause (**Canon 2113**). In the General Congregation the judgment whether the heroism of the virtues of a servant of God has been proved, or the martyrdom and its cause, is reserved to the Supreme

Pontiff; the consultors, prelate officials and Cardinals have merely a consultive vote (**Canon 2114**).

1968. At the command of the Holy Father, the Secretary of the Sacred Congregation shall draw up a decree wherein it is authoritatively stated, in the name of the Supreme Pontiff, that the heroic degree of all the virtues of the servant of God or his martyrdom are well proved, which decree shall be promulgated at a time and in a manner to be prescribed by the Holy Father. After the publication of this decree, the servant of God may be called *Venerable,* but this title does not imply any permission to honor him with public cult (**Canon 2115**).

ARTICLE IV.—OF THE JUDGMENT OF THE MIRACLES OF A SERVANT OF GOD IN PARTICULAR

1969. Besides heroism of virtues or martyrdom, miracles wrought through the intercession of the servant of God are necessary for his beatification. However, if there is question of a martyr whose martyrdom and its cause are evidently established both from the material and formal aspect, but there are no miracles, it is the office of the Sacred Congregation to decide whether the signs in the case suffice, and, if there are no signs, whether the Holy Father is to be petitioned to dispense with the signs in the case (**Canon 2116**).

The signs (*signa*), in contradistinction to the miracles, are minor miracles or marvelous facts, which do not satisfy all the conditions of a clear and evident miracle, or also miraculous gifts of the servant of God (e.g., prophecy, knowledge of things secret, etc.).

1970. For the beatification of servants of God only two miracles are required, if eye-witnesses in both the informative and the Apostolic process have established proof of the virtues, or if the witnesses examined in the Apostolic process at least received their knowledge from eye-witnesses. Three miracles are required if eye-witnesses testified to the heroic character of the virtues in the informative process, and in the Apostolic process witnesses who derived their information from others who in turn obtained their information from eye-witnesses. Four miracles are required, if in both processes the virtues were established by witnesses who obtained their knowledge from tradition only or by documents (**Canon 2117**).

1971. For the proof of the miracles two experts must be introduced *ex officio* at the beginning of the discussion; if both agree on the rejection of a miracle, one cannot proceed further with the cause. As it happens most frequently that, in the discussion of the miracles, there is question of a cure from some disease, the experts must be unusually prominent physicians or surgeons, and, if possible, such men are to be chosen who are specialists in the diagnosis and cure of the ailments of which there is question in the reported miracle (**Canon 2118**).

The opinions of the experts must be written in brief and clear style and supported by reasons, and they shall state these two things: (1) whether, if there is question of a cure, the person who is said to have been cured, must truly be considered cured; (2) whether the fact proposed as miraculous can be explained by the laws of nature or not (**Canon 2119**).

1972. The miracles must be discussed by three congregations in exactly the same manner as is ordained above for the proof of heroism of the virtues. In the discussion in one and the same congregation, with the exception of the general congregation before the Holy Father, more than two miracles may never be submitted (**Canon 2120**).

For the Antepreparatory Congregation the following statements shall be prepared: (1) a brief written by the attorney; (2) a summary of the depositions of witnesses; (3) the two opinions written regarding the reality of each miracle by the experts; (4) objections of the Promoter General of the Faith; (5) the answers of the attorney to the objections (**Canon 2121**).

For the Preparatory Congregation a statement shall be prepared in the manner demanded by Canon 2109, with new expert opinion as follows: For the giving of this opinion one expert only is to be appointed in this instance, if the two experts in the Antepreparatory Congregation were unanimous in affirming the miracle; if one expert only was in favor of the miracle, two new experts are to be nominated *ex officio*. The Cardinals of the same Sacred Congregation shall always have the right to appoint more experts than are prescribed, if they should deem it necessary in any case. The attorney is permitted to employ the aid of some expert in drawing up his answers, but this expert cannot give a vote or official opinion, and merely assists the attorney (**Canon 2122**).

1973. The General Congregation is conducted in the manner prescribed in Canons 2113–2114 (**Canon 2123**). After the decree of approval of the miracles, a new discussion must be instituted before the Supreme Pontiff on the question: Whether one may safely proceed to the beatification of the Servant of God. After having heard the opinions of the consultors and the Cardinals, the Supreme Pontiff decides this question, and, if he wishes, orders that a decree concerning this matter shall be drawn up and promulgated (**Canon 2124**).

TITLE XXV

OF THE PROCESS OF BEATIFICATION OF SERVANTS OF GOD BY THE WAY OF CULT OR THE EXCEPTIONAL CASE

1974. For the servants of God who, after the pontificate of Alexander III and before the time set by the Constitution of Pope Urban, had been honored with public cult by tolerance, the positive approval of that cult can be asked from the Roman Pontiff. To obtain this approval, the process outlined in the following Canons must be instituted (**Canon 2125**).

The Ordinary competent to institute this process is the Ordinary of the place where cult is given to the servant of God or where the documents of such cult are to be found. If several local Ordinaries are competent (e.g., because of cult given to the servant of God in several dioceses), the Ordinary who first begins the process (*jus præventionis*) is competent to conduct it (**Canon 2126**).

1975. At the request of the postulator the Ordinary must:

(1) examine the writings of the servant of God;

(2) institute the process on the repute for sanctity of life, virtues or martyrdom and miracles, whereby answers shall be given to these questions: Whether in that place there is a constant and common repute and conviction of the holiness of life of the servant of God or of his martyrdom and its cause, and also of miracles wrought at his intercession; whether the cult of the servant of God flourishes there at present, and by what marks of veneration he is honored (**Canon 2127**).

1976. After the acts of this process have been forwarded to the Sacred Congregation in the manner specified in Canons

2061–2063, the question whether a committee is to be appointed for the introduction of the cause shall be submitted in ordinary meeting to the discussion of the Cardinals under the direction of the Cardinal *Ponens* (**Canon 2128**).

1977. The committee having been appointed, remissorial letters shall be issued to the men designated by the Sacred Congregation, so that the Apostolic process may be instituted in accordance with the rules of law, and sentence pronounced by the delegated judge (**Canon 2129**). The process must establish the beginning of the cult and its uninterrupted continuation up to the time of the sentence of the delegated judge (**Canon 2130**).

After the process has been forwarded to the Sacred Congregation and has been opened, and after the attorney of the cause has prepared his case together with the objections of the Promoter General of the Faith and his own answers to the objections, the following question shall be proposed in ordinary meeting: Whether the verdict of the delegated judge is to be confirmed, and whether the exceptional case is proved with such certainty that the process may be permitted to proceed (**Canon 2131**).

1978. The confirmation of the verdict of the delegated judge on the part of the Roman Pontiff has merely the effect of establishing the fact that immemorial cult has been given to the servant of God and that it has continued up to the time of the issuance of the verdict (**Canon 2132**). If the sentence on the exceptional case is favorable and is approved by the Supreme Pontiff, remissorial letters shall be issued for the institution of the process on the virtues or the martyrdom and its cause, as the case may demand. In these processes the precepts of Canons 2087–2115 shall be observed (**Canon 2133**).

1979. After the issuance of the decree on the fact of immemorial cult and on the heroism of the virtues or on the martyrdom, the servant of God is to be considered equivalently beatified, if confirmation of his cult is contained in the decree of the Roman Pontiff (**Canon 2134**). Servants of God who are given this equivalent beatification, may be honored with the same marks of public cult by which formally beatified persons are usually honored (**Canon 2135**).

TITLE XXVI

OF THE CANONIZATION OF THE BEATIFIED

1980. Nobody may ask for the canonization of a servant of God, or petition the Sacred Congregation for permission to honor him with certain acts of public cult, unless it is first proved that such servant has been raised to the ranks of the beatified by either a formal or equivalent beatification (**Canon 2136**).

To prove to the Sacred Congregation the formal or equivalent beatification in any case, an authentic document must be exhibited. If no such document is available, a legitimate process must be instituted to prove the fact that positive permission of cult has been granted by the Roman Pontiff. After the completion of the process, a verdict shall be pronounced in ordinary congregation, and this shall be submitted for the approval of the Supreme Pontiff (**Canon 2137**).

1981. For the canonization of formally beatified persons, proof is required of two miracles which have happened since the formal beatification. For the canonization, however, of equivalently beatified persons, proof is required of three mirracles which have been wrought after the equivalent beatification (**Canon 2138**). When it is claimed that some miracle has been worked at the intercession of a beatified person, the Sacred Congregation at the instance of the postulator, if His Holiness approves, issues a decree that the cause be resumed and new processes instituted in accordance with the regulations given in the preceding Canons. After proof of the validity of the processes, the discussion on the new miracles is governed by the same laws as were stated above in Canons 2116–2124 (**Canon 2139**).

1982. All these things having been done, the Roman Pontiff considers the vote of the Cardinals and consultors and, if he judges it proper, issues a decree by which he pronounces that the cause may safely proceed to the solemn canonization of the beatified person (**Canon 2140**). After the solemn canonization of a beatified person has been decreed in consistory, the canonization ceremony shall be held with the sacred rites and solemnities customary in the Roman Curia (**Canon 2141**).

PART THREE

OF THE MANNER OF PROCEDURE IN CONDUCTING CERTAIN AFFAIRS AND IN THE APPLICATION OF PENAL SANCTIONS

1983. In the trials spoken of below a notary must always be employed to keep the minutes of the proceedings: these minutes must be subscribed by all who take part in the respective acts (e.g., in the examination of witnesses their depositions are to be subscribed by them, the notary and the judge) and preserved in the archives (**Canon 2142**).

Whenever admonitions are prescribed, these must be given either orally before the chancellor or another official of the Curia or in the presence of two witnesses, or by mail as prescribed by Canon 1719. An authentic record of the administering of the admonition and of its tenor shall be preserved among the acts of the case. A person who evades an admonition, is considered admonished (**Canon 2143**).[1]

By his very appointment the chancellor is also a notary (cfr. Canon 372). The bishop may also appoint other notaries —even laymen, if clerics are wanting, but in criminal cases of clerics the notary must be a priest (cfr. Canon 373).

1984. The examiners and consultors and the notary must at the beginning of a trial promise under oath to keep the secret in reference to all things of which they obtain knowledge in virtue of their office, and especially about secret documents, the discussions held in meetings, and the number and motives of votes or opinions given on matters pertaining to a case. If they have disobeyed this precept, they should not only be removed from their office, but also be punished by the Ordinary with an appropriate penalty, observing the rules of law for penalties which require certain formalities. They are, moreover, obliged to repair any damages they have caused by the violation of a secret (**Canon 2144**).

1 Concerning evasion of notifications from court, cfr. App. III, 83.

1985. In these trials (i.e., for the removal and transfer of pastors, and in proceedings against clerics who do not keep the law of residence, against clerics guilty of concubinage, and against pastors neglectful in their pastoral duties), summary proceedings are to be instituted. Nevertheless, two or three witnesses summoned either *ex officio* or presented by the party may be heard (*audiri non prohibentur*), unless the Ordinary after consultation with the parochial consultors or the examiners believes that the parties present the witnesses for the purpose of delaying the case. Witnesses and experts shall not be admitted, unless they have been sworn (**Canon 2145**).

1986. From the final decree or decision in the cases mentioned in the preceding paragraph, there is but one remedy in law, namely, recourse to the Apostolic See. In such a case, all the acts of the process must be forwarded to the Holy See, and pending the recourse, the Ordinary cannot validly give permanently to another a parish or benefice of which the cleric was deprived (**Canon 2146**).

The recourse does not suspend the sentence of the bishop, and the pastor who was deprived of his parish must leave it; but, pending the outcome of his appeal to the Holy See, the bishop can appoint only an administrator, and cannot definitely appoint a successor.[1a]

TITLE XXVII

OF THE MANNER OF PROCEDURE IN THE REMOVAL OF IRREMOVABLE PASTORS

1987. The distinction between irremovable and removable pastors is a matter of title rather than of permanency in office, for, though the formalities for the removal of the irremovable pastors are somewhat different from those for the removal of removable pastors, the reasons for which removal proceedings can be instituted are the same in both cases (cfr. Canons 2147, 2157). Since there is no appeal to a court outside the diocese possible in these cases (cfr. Canon 2146), and the men of the diocese who together with the bishop take part in the trial for removal of a pastor are themselves dependent on the bishop, the only remedy which remains to a pastor who believes that his removal is unfair consists in recourse to the Holy See.

[1a] Recourse within ten days after notice of removal, cfr. App. III, 82.

Reasons for Removal

1988. An irremovable pastor may be removed from his parish for a reason which makes his ministry in the parish harmful or at least inefficacious, even though there be no grave guilt on the part of the pastor. These reasons are especially the following:

(1) incompetency or permanent mental or bodily infirmity which incapacitate the pastor from discharging properly the duties of his office, if the Ordinary judge that the welfare of souls cannot be provided for by the appointment of an assistant priest (the *vicarius adjutor* spoken of in Canon 475);

(2) the hatred of the people, though unjust and not universal, provided it is such as to hinder the useful ministry of the pastor, and is not expected to abate soon;

(3) loss of good reputation among virtuous and serious men, whether this is caused by the levity of conduct of the pastor, or by a former offense which has recently been detected and for which he cannot now be punished on account of prescription barring prosecution, or by the conduct of members of his household or blood-relations living with him, unless by their departure the good reputation of the pastor can be restored;

(4) a probable occult crime imputed to the pastor which is of such a nature that the Ordinary prudently foresees that great scandal may be thereby provoked among the faithful;

(5) inefficient administration of the temporal goods with great damage to the church or benefice, whenever the evil cannot be remedied either by depriving the pastor of the administration or in some other manner, though otherwise the pastor usefully exercises the spiritual ministry (**Canon 2147**).

1989. These are the chief reasons for removal, although other reasons are not excluded. The Code has but one principle in this matter, namely, the good of the parish; and, if the parish suffers seriously either in its spiritual or its temporal wellbeing and the harm cannot be averted except by removal of the pastor, he must be sacrificed for the sake of the common weal. The reasons stated by the Code as the chief causes for removal are vague, for the Code leaves it to the conscience and the discretion of the bishop to decide whether the removal is

truly necessary to avert serious spiritual or temporal harm from the parish. The removal is not a matter of punishment, for, if it were, the vagueness of the reasons for removal would be inexcusable; it is simply a case in which private rights which conflict with the common welfare must be sacrificed.

The Council of Trent has the following law: "Inasmuch as illiterate and unskilled rectors of parish churches are but little fit for the sacred offices; and others, by reason of the turpitude of their lives, rather destroy than edify; the bishops, even as the delegates of the Apostolic See, may depute to the said illiterate and unskilled rectors, if they be otherwise of a blameless life, coadjutors or vicars for the time being, and assign to the same a part of the fruits for their sufficient maintenance, or provide for them in some other manner, setting aside any appeal or exception whatsoever. But, as for those who live shameful and scandalous lives, they shall, after having first admonished, restrain and punish them; and, if they shall still continue incorrigible in their wickedness, they shall have power to deprive them of their benefices, according to the constitutions of the sacred canons, setting aside every exemption or appeal whatsoever."[1b] At the Vatican Council the German bishops requested the passage of a law providing for an involuntary transfer of pastors, or a dismissal with a sufficient pension, if the pro-synodal examiners had pronounced them unfit. The Council was interrupted and no action was taken on this proposal.[2] The Decree "Maxima cura" of the Sacred Consistorial Congregation, August 20, 1910, provided for the administrative removal of pastors,[3] and the Decree was declared applicable also to the United States on March 13, 1911, and to England on February 28, 1911.[4] Practically all the provisions of this Decree have been embodied in the Code, but the reasons for removal have been extended beyond those given by the Decree. The welfare of the people is the supreme law, and private rights and interest must give way to the public necessity or utility.[5]

[1b] Sessio XXI, c. 6, *De Reform.*
[2] Augustine, "Commentary," VII, 410.
[3] *Acta Ap. Sedis,* II, 636.
[4] *Acta Ap. Sedis,* III, 133.
[5] *Decisiones S. Rom. Rotæ,* III, 43.

Invitation to Resign Parish

1990. Whenever the Ordinary prudently judges that a pastor has fallen into any of the causes stated in Canon 2147, he shall consult two of the examiners and discuss with them whether the cause really exists and how serious it is, and then he shall invite the pastor, either in writing or orally, to resign his parish within a specified length of time, unless there is question of a pastor whose mind is affected. The invitation must, under pain of invalidity of the proceeding, contain the reason which moves the Ordinary to take this step, and the arguments which have convinced him of the existence of the reason (**Canon 2148**).

1991. If the pastor within the specified period neither resigns nor requests a delay, nor attacks the reasons cited for removal, the Ordinary shall at once remove him from the parish without being obliged to observe the precept of Canon 2154, provided he has first ascertained that a properly executed invitation to resign came to the notice of the pastor (i.e., that he actually received the invitation, or that he purposely evaded its reception), and that the pastor was not legitimately hindered from answering the invitation. If there is no certainty about those two points, the Ordinary shall either repeat the invitation to resign, or prolong the time (*tempus utile*) for the answer (**Canon 2149**). The prolonged time is called *tempus utile* to imply that it does not lapse if the pastor is legitimately prevented from acting within that time (e.g., by illness, by being called away from home by a death in his family, etc.).

Effects of the Acceptance of Invitation to Resign

1992. If the pastor resigns his parish, the Ordinary shall declare the parish vacant by resignation. Instead of the reason stated by the Ordinary, the pastor may give some other less disagreeable or serious motive for resigning, provided it is true and honorable—e.g., in order to comply with the wishes of the Ordinary. The resignation may be made not only pure and simple, but also conditionally, provided the condition is such that it can be and actually is accepted by the Ordinary. The resignation must, according to Canon 186, be made either in

writing, or orally before two witnesses, or by a proxy appointed by special mandate, and a document recording the resignation must be placed in the archives of the Curia (**Canon 2150**).

Refusal to Resign and Forced Removal

1993. If a pastor wishes to attack the reason for removal cited in the invitation to resign, he may ask for delay to prepare his proofs, which delay the Ordinary may grant at his discretion, provided that no detriment will be thereby caused to the spiritual welfare of the parishioners (**Canon 2151**).

Before he can validly accept or reject the pastor's reasons for refusing to resign, the Ordinary must consult the examiners, spoken of in Canon 1248, and carefully weigh these reasons. The decision, whether affirmative or negative, shall be communicated to the pastor by a decree (**Canon 2152**). The Decree "Maxima cura" ordained that the examiners give their opinion by secret vote. By the law of the Code the Ordinary alone renders the decision, but he cannot do so without first consulting the examiners. It is immaterial in what manner they express their opinion, and he is not obliged to follow it.

Recourse Against First Decision of Removal

1994. Within ten days after the decree of removal, the pastor may have recourse to the same Ordinary against the decision. For the validity of the proceedings, the Ordinary must, in consultation with two of the parochial consultors, examine the new allegations made by the pastor together with the reasons he advanced in the first stage of the procedure. The pastor must produce the new proofs within ten days after recourse. The decision is given by the Ordinary, who is not obliged to follow the opinion of the parochial consultors. (The proceedings, however, must be recorded and with it the opinion of the consultors, wherefore the Ordinary must be certain of his reasons if he were to disregard the unanimous opinion of the two consultors.) Subject to the precepts of Canon 2145, the pastor may produce in these proceedings a limited number of witnesses, if he can prove that he was unable to produce them

in the first stage. The new decision is to be made known to the pastor by decree (**Canon 2153**).

Canon 2146 states that, from the final decision in these cases, no appeal to a superior court is granted, but only a recourse to the Apostolic See. That Canon, however, does not state within what time the recourse can be made. The Sacred Congregation of the Council, January 12, 1924, decided that the pastor has ten days (*tempus utile*) from the notification of the final decision to have recourse to the Holy See, and he must inform the local Ordinary of his appeal.[6]

Provision to be Made for Removed Pastor

1995. After a pastor has been removed, the Ordinary shall consult the examiners or the parochial consultors who took part in the proceedings of removal, and carefully decide what provision should be made for the pastor. According to the facts and circumstances of the case, he may be either transferred to another parish, or assigned some other office or benefice (if he is capable of filling it), or pensioned. All other things being equal, a pastor who resigns is to receive more favorable consideration in this provision than a pastor who was removed (**Canon 2154**). The question of providing for the removed pastor may be settled by the Ordinary either in the decree of removal or afterwards, but it should be done as soon as possible (**Canon 2155**).

Duty to Obey Decree of Removal

1996. The priest who is removed from a parish must as soon as possible vacate the parochial residence and hand over to the new pastor or to the administrator appointed temporarily by the Ordinary all things pertaining to the parish. If, however, the removed priest should be sick, and thus cannot without inconvenience be transferred from the rectory to another place, the Ordinary shall let him have the use of the house, even the exclusive occupation, while the necessity lasts (**Canon 2156**).

[6] *Acta Ap. Sedis,* XVI, 162.

TITLE XXVIII

OF THE MANNER OF PROCEDURE IN THE REMOVAL OF REMOVABLE PASTORS

1997. A removable pastor can be removed from his parish for a just and grave reason, as explained in Canon 2147. In the case of the removal of religious pastors, the precept of Canon 454 is to be observed (**Canon 2157**).

If the Ordinary believes that there is one of these causes for removal, he shall paternally admonish and exhort the pastor to resign the parish, declaring the reason which renders his ministry in the parish harmful or at least inefficacious (**Canon 2158**).

If the pastor does not answer the invitation within the days fixed by the Ordinary, Canon 2149 applies. If he replies that he refuses to resign, he shall state his reasons in writing which the Ordinary for the validity of the proceedings must discuss with two of the examiners (**Canon 2159**).

1998. If, after hearing the examiners, the Ordinary does not judge the reasons advanced by the pastor to be legitimate, he shall renew his paternal admonitions to the pastor, and threaten him with removal, if he does not of his own accord resign the parish within a proper period of time determined by the Ordinary (**Canon 2160**).

After the lapse of the specified term, which may be prolonged by the Ordinary at his discretion, he shall issue the decree of removal. The Ordinary is obliged to provide for the resigning or removed pastor according to Canons 2154–2156 (**Canon 2161**).

Canon 2146 in reference to the recourse to the Holy See against the decree of removal applies also in the case or the removal of a removable pastor. Since, in case of recourse, the Ordinary must forward the proceedings of removal to the Holy See, it is important that a notary record all the acts from the admonition to resign to the decree of removal.

TITLE XXIX

OF THE MANNER OF PROCEDURE IN THE TRANSFER OF PASTORS

1999. If the good of souls necessitates the transfer to another parish of a pastor who is administering his parish satisfactorily, the Ordinary shall propose the transfer to the pastor and persuade him to consent to the change for the love of God and the welfare of souls (**Canon 2162**).

The Ordinary cannot transfer an irremovable pastor against his will, unless he has obtained special faculties from the Apostolic See. A removable pastor, however, may be transferred even against his will, if the parish *ad quam* (to which he is to be transferred) is not of a greatly inferior rank, provided the following Canons are observed (**Canon 2163**).

2000. If the pastor does not yield to the counsel and persuasion of the Ordinary to accept another parish, he shall explain his reasons for refusal in writing (**Canon 2164**). If, notwithstanding the reasons stated by the pastor, the Ordinary desires to make the change, he must for valid action hear two parochial consultors on the reasons advanced by the pastor, and discuss with them the circumstances of both the parish *a qua* and the parish *ad quam*, and the reasons which make the transfer of the pastor either useful or necessary (**Canon 2165**).

2001. If, after consultation with the parochial consultors, the Ordinary still believes that the transfer should be made, he shall repeat the paternal exhortations to the pastor to accede to the wishes of his superior (**Canon 2166**). If the pastor nevertheless refuses to resign, and the Ordinary still desires to make the transfer, he shall command the pastor to move to the new parish within a specified time, informing him in writing that the parish which he now holds shall be *ipso facto* vacant on the expiration of term specified. If this period elapses without results, the Ordinary shall declare the parish vacant (**Canon 2167**).

Recourse to the Holy See against the transfer is permissible, for Canon 2146 seems to apply to all of the six cases outlined in Part Three, Book Four, but, as Vermeersch-Creusen remark,

the recourse is not advisable unless the Ordinary's action is evidently unfair.[7]

TITLE XXX

OF THE MANNER OF PROCEDURE AGAINST CLERICS VIOLATING THE LAW OF RESIDENCE

2002. Any pastor, canon, or other cleric, who violates the law of residence to which he is bound by reason of his benefice, shall be admonished by the Ordinary, who shall meanwhile, if there is question of a pastor, make provisions at the expense of the pastor to prevent any detriment to the welfare of souls. In the admonition the Ordinary shall remind the offender of the penalties which clerics incur who do not keep residence, and also of the precept of Canon 188, n. 8, in accordance with which the benefice shall become vacant *ipso facto,* if he does not obey or answer the admonition; the Ordinary shall specify the period of time within which the cleric must resume residence (**Canon 2168**).

This Canon speaks of clerics only who are obliged to keep residence by reason of a benefice. Wherefore, the procedure here laid down applies only to clerics who hold residential benefices. Nevertheless, Canon 143 forbids all clerics, even though they hold no benefice or office which requires residence, to leave the diocese for a notable length of time without permission of their Ordinary, and if they violate this law the Ordinary can certainly punish them. Canon 188, n. 8, decrees the *ipso facto* loss of a benefice or office which requires residence, if a cleric illegitimately deserts the benefice or office, and, after having been admonished to return within a specified time, does not return or answer.

Effect of the Admonition to Return

2003. If a cleric does not resume his residence within the specified time or give reasons for his absence, the Ordinary shall declare the parish or other benefice vacant; before issuing

[7] *Epitome,* III, n. 363.

the declaration, he shall observe the formalities of Canon 2149 (**Canon 2169**).

If the cleric resumes residence, and if his absence has been illegitimate, the Ordinary is bound not only to punish him with deprivation of the income of the benefice for the time of his absence (as Canon 2381 requires), but he may also, if the case calls for it, punish him with other penalties in proportion to his guilt (**Canon 2170**).

2004. If the cleric does not resume residence but gives reasons for his absence, the Ordinary together with two examiners shall consider whether the reasons are legitimate, and if necessary institute proper investigations (**Canon 2171**). If, after consultation with the examiners, the Ordinary judges that the reasons are not legitimate, he shall again give the cleric a specified interval within which he must return. Since his absence is declared illegitimate, he must be deprived of the income of his benefice for the time of his illegal absence (**Canon 2172**).

2005. If a removable pastor does not return to his parish within the prescribed time, the Ordinary may at once proceed to deprive him of the parish. If he returns, the Ordinary shall give him a precept not to again leave his parish without written permission under penalty of deprivation of the parish to be incurred *ipso facto* (**Canon 2173**).

2006. If a cleric who holds an irremovable benefice does not resume residence after the Ordinary has rejected his reasons for absence, but adduces new reasons, the Ordinary shall consult the two examiners spoken of in Canon 2171, and shall together with them investigate the reasons. If the Ordinary does not consider these new reasons legitimate, he shall without further proceedings command the cleric to resume residence within the time first fixed, or within an interval to be now prescribed, under penalty of deprivation of the parish to be incurred *ipso facto*. If he does not return, the Ordinary shall declare him deprived of his benefice; if he returns, the Ordinary shall give him the same precept spoken of in Canon 2173 (**Canon 2174**).

2007. In neither case (i.e., of a removable or irremovable benefice), shall the Ordinary declare a benefice vacant, until he has discussed with the examiners the reasons which the cleric may have alleged for leaving the benefice, and has established

the fact that the cleric could have asked the written permission of the same Ordinary (**Canon 2175**). Recourse to the Apostolic See is available under the general provision of Canon 2146.

TITLE XXXI

OF THE MANNER OF PROCEDURE AGAINST CLERICS LIVING IN CONCUBINAGE

2008. The cleric who, contrary to the law of Canon 133, keeps under his roof or in any manner associates with a woman of suspicious character, shall be admonished by the Ordinary to send her away, or not to associate with her further, under pain of incurring the penalties which Canon 2359 decrees against clerics living in concubinage (**Canon 2176**).

Concubinage properly so-called means illicit and habitual sexual intercourse with the same woman (after the manner of a wife, as some of the old canonists express it); the fact that the woman does not live in the same house is immaterial.[8] Some canonists speak of a *mulier soluta et corrupta,* but the Code employs the term "mulier" without any qualification. The Code makes a cleric liable to the penalties for concubinage, not only when actual concubinage is proved against him, but also when there is suspicion of concubinage, and the Ordinary has vainly issued a warning to the cleric to remove the woman from his house or not to associate with her (cfr. Canon 133).

Effect of Disobedience to the Warning

2009. If the cleric neither obeys the precept nor answers, the Ordinary, after having ascertained he could have obeyed the orders or given an answer, shall:

(1) suspend him *a divinis;*

(2) deprive him at once of the parish, if he is a pastor;

(3) deprive a cleric who holds a benefice without the care of souls of one-half of the income of his benefice, if he within two months from the suspension has not amended; after three more months, of all the income of his benefice, and after another three months of the benefice itself (**Canon 2177**).

[8] Reiffenstuel, "Jus Universum," III, tit. 2, nn. 13–14.

Defence of the Cleric

2010. If the cleric does not obey the precept of the Ordinary but gives reasons for excuse, the Ordinary must consult two examiners regarding the reasons advanced (**Canon 2178**). If, after consultation with the examiners, the Ordinary does not judge the reasons legitimate, he shall as soon as possible inform the cleric to that effect, and give him a formal precept to obey within a short interval to be defined by the Ordinary (**Canon 2179**).

2011. If the cleric is a removable pastor and he does not obey within the time fixed in the precept, the Ordinary may at once coerce him by the penalties stated in Canon 2177. If a cleric holding an irremovable benefice does not obey but alleges new reasons against the second precept, the Ordinary shall consult the same two examiners mentioned in Canon 2178 (**Canon 2180**). If the Ordinary does not consider the new reasons a legitimate excuse for evading his precept, he shall again command the irremovable cleric to obey within a proper interval and, if that time has elapsed without results, he may proceed against him with the penalties of Canon 2177 (**Canon 2181**). Recourse of the cleric to the Apostolic See is governed by Canon 2146.

TITLE XXXII

OF THE MANNER OF PROCEDURE AGAINST A PASTOR NEGLIGENT IN THE FULFILLMENT OF HIS PASTORAL DUTIES

2012. If a pastor grossly neglects or violates the pastoral duties described in Canon 467 (administering the Sacraments, guiding and instructing his people in the spiritual duties), Canon 468 (assisting the sick and the dying), Canon 1178 (guarding the church against profanation, keeping it clean), Canons 1330–1332 and 1344 (preaching and teaching of Christian doctrine), the bishop shall admonish him, reminding him of his strict obligation of conscience and the penalties which the law decrees against these offenses (**Canon 2182**).

2013. If the pastor does not amend, and the bishop, after having consulted two of the examiners and given the pastor an

opportunity to defend himself, has found proof that the above-mentioned parochial duties have repeatedly been neglected or violated in serious matters for a notable length of time without any just excuse, he shall rebuke the pastor, and impose on him an appropriate penalty in proportion to his guilt (**Canon 2183**).

2014. If both the rebuke and the punishment prove unavailing, the Ordinary, after having proved according to Canon 2183 the pastor's culpable perseverance in the neglect or violation of the pastoral duties in a grave matter, may at once deprive a removable pastor of his parish; he may deprive an irremovable pastor of the income of his benefice, either in whole or in part in proportion to the gravity of his guilt, and distribute it among the poor (**Canon 2184**). If the contumacy of the irremovable pastor continues and is proved in the manner described above, the Ordinary can remove even an irremovable pastor from his parish (**Canon 2185**). Recourse to the Holy See against the final decree of removal is governed by Canon 2146.

TITLE XXXIII

OF THE MANNER OF PROCEDURE FOR INFLICTION OF THE SUSPENSION "EX INFORMATA CONSCIENTIA"

2015. The Ordinary may punish his clerical subjects with suspension from office *ex informata conscientia,* which suspension may be either partial or total. This extraordinary remedy may not be employed by the Ordinary, if he can without grave inconvenience proceed against his subject in the ordinary course of law (**Canon 2186**).

In order that certain occult crimes might not go unpunished, the Council of Trent empowered the bishop to forbid without judicial procedure clerics to receive higher orders or to exercise those received because of secret crimes.[9] The Sacred Congregation of the Propaganda issued an Instruction on the suspension *ex informata conscientia,* October 20, 1884, which, except for some slight modifications, has been embodied in the following Canons of the Code.[10]

[9] Sessio XIV, cap. 1, *De Reform.*
[10] *Collectanea de P. F.,* II, n. 1628.

2016. Neither judicial formalities nor canonical admonitions are required for inflicting this suspension; it suffices that the Ordinary in compliance with the following Canons issue a decree in which he simply declares that he inflicts the suspension (**Canon 2187**).

2017. The aforesaid decree must be given in writing, unless circumstances demand otherwise, and besides the day, month and year:

(1) it shall explicitly state that the suspension is inflicted *ex informata conscientia* or for reasons known to the Ordinary;

(2) it shall declare the duration of the penalty, for the Ordinary shall abstain from inflicting it perpetually. The suspension may be inflicted also as a censure, provided in this case the reason why the suspension is inflicted is made known to the cleric;

(3) the acts which are forbidden shall be clearly indicated, if a partial suspension only is inflicted (**Canon 2188**).

For the sake of the public welfare of souls the Church gives the Ordinary this unusual power to punish with a very grave penalty, without previous admonition, without granting time to amend, without being obliged to prove the offense to the culprit, and even without the obligation of informing him why he is thus punished. Canons 2190–2191 determine the conditions under which the suspension *ex informata conscientia* can be inflicted. The opinion of the Synod of Pistoia that the suspension *ex informata conscientia* is null and void was condemned by Pope Pius VI as false, pernicious and injurious to the Council of Trent.[11]

Canon 2188 states that the Ordinary must declare that the suspension is inflicted *ex informata conscientia,* for otherwise the cleric might object to the penalty for lack of the previous admonition, which is ordinarily required before a grave penalty can be inflicted (cfr. Canon 2222).

2018. If a cleric has been suspended from an office in which another has to be appointed to take his place (e.g., an administrator of a parish to exercise the care of souls), the substitute shall receive a salary from the income of the benefice to be fixed according to the prudent judgment of the Ordinary. If the suspended cleric believes that the salary of the substitute

[11] Denziger, "Enchiridion" (12th ed.), nn. 1549–1550.

is too heavy a burden, he can petition a reduction of the salary from the immediate superior, who would be the judge of the court of appeal in the ordinary canonical trial (**Canon 2189**). On the court of appeal, cfr. Canon 1594.

Conditions under which Suspension "ex Informata Conscientia" Can Be Inflicted

2019. The Ordinary who inflicts a suspension *ex informata conscientia* must have gathered by previous investigation such proofs as to give him certainty that the cleric has actually committed an offense so serious that he must be restrained by such a penalty (**Canon 2190**).

An occult offense, as described in Canon 2197, n. 4, furnishes a just and legitimate cause for inflicting the suspension *ex informata conscientia.* A notorious offense may never be punished with suspension *ex informata conscientia.* In order that a public offense can be punished with suspension *ex informata conscientia,* one of the following circumstances must necessarily occur:

(1) if conscientious and responsible witnesses make some offense known to the Ordinary, but cannot in any way be induced to testify in court to the crime, and there are no other proofs available by which it can be proved in a judicial trial;

(2) if the cleric himself by threats or the use of other means prevents the institution of a judicial trial against him, or hinders the completion of a trial commenced;

(3) if impediments to the institution of a judicial trial and the declaration of a sentence arise from adverse civil laws, or from fear of grave scandal (**Canon 2191**).

2020. Ordinarily the suspension *ex informata conscientia* can be inflicted only for an *occult* offense. Canon 2197 states that an offense is occult, when it is not public. The same Canon explains that an offense is public when it has already been divulged—that is, a knowledge of it has been spread among the public (*vulgus*)—or if the circumstances of the offense are such that it can and must be prudently foreseen that it will easily come to the knowledge of the public. If only a few persons know of the offense, and they are of such a character that there is no danger of their publishing the offense, it is still occult.

Now, even if there are only a few persons who have direct knowledge (not from hearsay) of the offense, the offense can be proved against the cleric, and the Ordinary is not to proceed with the suspension *ex informata conscientia,* if he can without great inconvenience proceed against him by ordinary trial (cfr. Canon 2186). If, however, the few witnesses absolutely refuse to testify in court against the cleric (e.g., because their connection with the offense makes them ashamed to testify, or because they are afraid of the cleric or his friends), the Ordinary can proceed *ex informata conscientia.*

2021. The suspension *ex informata conscientia* is valid, if among several offenses committed by a cleric one only is occult (**Canon 2192**). In this case the Ordinary can at once suspend the cleric for reason of the occult offense, provided the conditions of Canon 2190 as to investigation and proof are observed, and he can also proceed against him for the public offenses by regular criminal trial. The criminal trial for the public offenses, appeal from the sentence, etc., takes its regular course; the previous suspension *ex informata conscientia* is no bar to such proceedings. If the cleric is not convicted of the public offenses in the criminal trial, the suspension for the occult offense holds nevertheless. Formerly the suspension *ex informata conscientia* inflicted for an indefinite length of time was considered perpetual and a perpetual suspension *ex informata conscientia* was invalid.[12] The Code, however, does not make a perpetual suspension of this kind invalid, but forbids the Ordinary to inflict it perpetually (cfr. Canon 2188).

2022. It is left to the discretion of the Ordinary to declare to or conceal from the cleric the cause or offense for which he has suspended him, but, if he thinks it advisable to manifest the offense to the cleric, he shall do so with paternal solicitude and charity, so that the penalty accompanied with paternal admonitions may not only serve for the satisfaction of the guilt, but may also lead to the amendment of the offender and the elimination of the occasion of sin (**Canon 2193**).

[12] Sacred Cong. of the Council, December 20, 1873 (*Acta S. Sedis,* VII, 569).

Recourse to the Holy See Against the Suspension

2023. If the cleric takes recourse to the Holy See against the suspension *ex informata conscientia,* the Ordinary must forward to the Holy See the proofs by which it is established that the cleric actually committed an offense which may be punished with this extraordinary penalty (**Canon 2194**).

As the recourse does not suspend the effect of the penalty, the cleric must in the meantime abstain from those acts which have been forbidden to him by the suspension. This is not explicitly stated, and cannot, as Eichmann remarks,[13] be proved from the Code, but it is a general principle in law that, from the disciplinary and administrative acts of the Ordinary, there is no appeal, but only from judicial sentences; and the suspension *ex informata conscientia* is not a judicial proceeding. Besides, the Instruction of the Sacred Congregation of the Propaganda, referred to above (n. 2015), explicitly stated that the recourse to the Holy See did not relieve from the effects of the suspension until the Holy See has rendered its decision.

Ordinaries of Religious and the Suspension "ex Informata Conscientia"

2024. The major religious superiors of exempt clerical organizations are Ordinaries in law (cfr. Canon 198), and they have over their religious subjects the same jurisdiction as the local Ordinary has over the secular clerics of his diocese. The Decretals of Pope Gregory IX contain a Decree of Pope Lucius III, which attributes to the superiors of regulars the right to forbid their subject the reception of higher orders for reason of occult offenses.[14] The Code speaks of Ordinaries in general in the procedure to be observed in the suspension *ex informata conscientia,* and the major religious superiors of exempt clerical organizations are included under that term.

[13] *Prozessrecht,* 269.

[14] c. 5, *De Temporibus Ordinationum et Qualitate Ordinandorum,* lib. I, tit. 11.

Book Five

OF OFFENSES AND PENALTIES

PART ONE

OF OFFENSES

TITLE I

OF THE NATURE AND DIVISION OF OFFENSES

2025. In Canon Law the term "offense" implies an external and morally imputable violation of a law, to which at least an indeterminate canonical sanction is attached. Unless the contrary appears from the circumstances, what is said about offenses is to be applied also to violations of a precept to which a penal sanction is attached (**Canon 2195**).

Not every violation of law is an offense, but only the violation of those laws which have a penalty attached to them. That penalty may be either *specific* (e.g., an excommunication, suspension, fine, etc.) or *generic* (e.g., the Ordinary shall punish the transgressor with an appropriate penalty). Precepts of an ecclesiastical superior imposed on his subject with the threat of penalty in case of disobedience have the effect that the transgression ordinarily becomes an offense. The penal sanction attached to the law or precept takes the place of a warning, and, once it has been ascertained that a person is guilty, he may be punished (see Canon 2233 on an exception as to censures). On the contrary, when no penalty is attached to a law or a precept, one cannot ordinarily be punished, unless one has first been warned and threatened with a penalty of either *latæ* or *ferendæ sententiæ*. Only in cases where the seriousness of the

scandal or the special gravity of the violation of a law or a precept which had no penal sanction attached to it demands it, can a penalty be inflicted without a warning (cfr. Canon 2222).

2026. Besides the penal sanction attached to a law, it is necessary for the purpose of constituting an offense that the person breaking the law commit an *external* and *morally imputable* act against the law. The external act is required, for purely internal acts cannot be reached by the judicial power. "De manifestis quidem loquimur: secretorum autem, et cognitor et judex est Deus," says Pope Alexander II.[1] The *moral imputability* or guilt of the person who violates a law is to be determined according to Canons 2199–2211, which are explained below. It may be noted here that two terms are used in the Code to denote offenses (*delictum* and *crimen*), and they are interchangeable.[2]

The *quality* or species of an offense is to be determined by the object of the law; the *quantity* or gravity is to be measured, not only by the gravity of the particular law which was broken, but also by the greater or lesser imputability or damage caused (**Canon 2196**).

Division of Offenses

2027. (1) An offense is *public,* if it has already been divulged, or if it was committed under or attended by such circumstances that its divulgation may and must be prudently considered easily possible;

(2) an offense is *notorious by notoriety of law* after a sentence of a competent judge which has become irrevocable (*res judicata*), or after a confession of the delinquent made in court in the manner described in Canon 1750;

(3) an offense is *notorious by notoriety of fact,* if it is publicly known and committed under such circumstances that it cannot be concealed by any subterfuge, nor excused by any excuse admitted in law (i.e., both the fact of the offense and the imputability or criminal liability must be publicly known);

(4) an offense is *occult* if it is not public; it is *materialiter occult,* if the offense itself is not publicly known; it is *forma-*

[1] *Decretum Gratiani,* c. 11, D. 32.
[2] Vermeersch-Creusen, "Epitome," III, n. 383.

liter occult, if the fact is public, but its imputability is not public (**Canon 2197**).

2028. The distinction between occult and public offenses is explained in general terms by the Code. Canonists have given more specific rules by which one may judge whether an offense is to be considered publicly known. In the first place, the number of people who were witnesses to an offense and the number of inhabitants of the place where the offense was committed, must be taken into consideration to determine whether an offense may be said to be public. It is maintained by many canonists that at least six persons in a small town or community must know of the offense before it can be called public, and more persons in proportion to the greater number of inhabitants before it can be called public in larger places. However, canonists consider, not only the relative number in determining whether an offense is occult or public, but also the character of the perhaps few persons who witnessed the commission of the offense—whether they are reserved and taciturn or talkative and eager to make known what they have witnessed.[3] The Code calls an offense public when knowledge of it has been spread among the people (*divulgatum*), or when it was committed under circumstances which make it practically impossible to keep the offense secret.

2029. In order that a crime may be called public, it is necessary that the fact be publicly known as a criminal or morally imputable act—in other words, that the act is known as a crime. Thus, if a person has been dangerously wounded or killed, it is not enough that the fact is known, but it must also be known that the act was a criminal one, and not committed by accident or in self-defence. Is it necessary that the offender be known to the public to make the act a public crime? It seems so, for the imputability of Canon 2197, n. 4, refers to the person of the offender. If the offender does not stand identified before the public as the perpetrator of the criminal act, his offense is occult—called *formaliter* occult in the Code.

2030. An offense which violates solely the law of the Church, is by its very nature subject to punishment by the ecclesiastical authority only, although this authority may at times ask the assistance of the civil power, when it judges such help necessary

[3] Lega, "De Delictis et Pœnis" (2nd ed.), n. 244.

or opportune. An offense which violates solely a law of the civil society, is punished by the civil authority according to its own law, except that, in accordance with Canon 120, clerics are to be tried in ecclesiastical courts only, and the Church also is competent to judge it by reason of sin committed. An offense which violates the law of both Church and State may be punished by both (**Canon 2198**).

If it is conceded that the Church has received from Christ authority to make laws for the spiritual guidance of her adherents and to regulate matters pertaining to the end for which He established the Church, it must be conceded also that she has the right to judge offenses and punish them, for the legislative power is practically useless without the power to enforce the law.

TITLE II

OF THE IMPUTABILITY OF AN OFFENSE, THE CAUSES WHICH AGGRAVATE OR DIMINISH IMPUTABILITY, AND THE JURIDICAL CONSEQUENCES OF AN OFFENSE

2031. The imputability of an offense depends on the evil will (*dolus*) of the delinquent, or on the extent to which his ignorance of the violated law or his omission of proper diligence was culpable. Wherefore, all causes which increase, diminish or destroy the evil will or culpability, automatically increase, diminish or destroy the imputability of the offense (**Canon 2199**).

An act (or an omission) prohibited by law, knowledge, and free will or deliberation in doing the act (or omitting to act), are the principal elements in an offense. There can be no evil will or malice in acting against the law, unless a person knows the law, or is in culpable ignorance of the law, and has the use of his free will to obey or disobey the law. The succeeding Canons speak of the various conditions and circumstances which may affect the mind or the will in human actions, and consequently the liability for the same.

2032. The evil will (*dolus*), spoken of in Canon 2199, means a deliberate will to violate a law, and presupposes on the part of the mind a knowledge of the law and on the part of the will

freedom of action. Given the external violation of a law, the evil will is presumed in the external forum until the contrary is proved (**Canon 2200**).

The rule here stated is evidently necessary for the public welfare. The laws are published by the authorities, and it is the duty of the subject to inform himself of these laws, for the legislator cannot inform each subject individually of the laws that have been passed. The authorities presume, therefore, that a subject knows the law, and, if he violates it, he is considered to have broken it wilfully. If he claims to be free from liability, the burden of proof rests with him.

Disabilities Affecting the Mind

2033. Persons who actually do not enjoy the use of reason are incapable of committing an offense. Habitually insane persons are presumed to be incapable of committing an offense, though they have at times lucid moments, or seem to be sane in certain of their ratiocinations and actions. An offense committed in voluntary drunkenness is not free from some imputability, but the degree is less than if the same offense had been committed by a person in full control of his senses, unless drunkenness was brought on deliberately with a view to committing the crime or furnishing an excuse for its commission. When a law has been broken in involuntary drunkenness, there is no imputability at all, if the drunkenness deprived the person altogether of the use of reason; the imputability is diminished, if the use of reason was only partially impaired. The same applies to other similar mental disturbances. Mental weakness diminishes, but does not destroy imputability (**Canon 2201**).

Ignorance of the Law

2034. The violation of a law of which one was ignorant is entirely non-imputable, if the ignorance was inculpable; if it was culpable, the liability varies in proportion to the culpability of the ignorance. Ignorance of the penalty only does not destroy liability, but it mitigates it somewhat. What is said of ignorance, applies also to inadvertence and error (**Canon 2202**).

As ignorance, inadvertence, error, excitement, depression, and great mental or bodily sufferings disturb the mind and will,

and frequently impede perfect deliberation in human acts, they may be pleaded as mitigating circumstances. In reference to ignorance more specific rules are given in Canons 16 and 2229 (cfr. Vol. I, n. 14, and below, n. 2068).

Omission of Due Care

2035. If a person violates a law by the omission of proper diligence or care, the liability is diminished to a degree to be determined from the circumstances at the prudent discretion of the judge. If the offender foresaw the infraction of the law and nevertheless neglected to use those precautions which any prudent person would have employed, the guilt is practically equivalent to deliberate violation of the law (*dolus*). An accidental case which could not be foreseen, or, if foreseen, could not be avoided, excuses from all liability (**Canon 2203**).

Liability of Minors

2036. Unless the contrary is apparent, minority diminishes the liability, and in a progressively greater degree as it approaches infancy (**Canon 2204**).

Minors are persons under twenty-one years of age (cfr. Canon 88). On the exemption of minors who have not attained the age of puberty from penalties *latæ sententiæ*, cfr. Canon 2230.

Liability in Case of Force or Fear

2037. Physical violence which deprives a person of all freedom of action absolutely excuses from liability. Grave fear, even though only relatively such, necessity, and even great inconvenience, excuse as a rule from all liability, if there is question of purely ecclesiastical laws. If, however, an act is intrinsically evil, involves contempt of the faith or of ecclesiastical authority, or works to the detriment of souls, excuses based on grave fear, necessity and great inconvenience diminish, but do not destroy liability. Legitimate self-defence against an unjust aggressor, provided due moderation is observed, excuses from all guilt; if the bounds of due precaution are exceeded in repelling an aggressor, the aggression only diminishes liability. Provocation also diminishes liability (**Canon 2205**). The prin-

ciples here enunciated by the Code are the same as in the former Canon Law.

Liability for Acts Done in Passion

2038. If passion was voluntarily and deliberately aroused or fostered, it rather increases the imputability of the offense; otherwise, it diminishes liability to a more or less degree in proportion to the heat of passion, which, if it precedes and impedes all deliberation of the mind and consent of the will, destroys all liability (**Canon 2206**).

The passions which interfere with fully deliberate human acts are intense or overpowering feelings (e.g., anger, hatred, envy, revenge, etc.). If these feelings are freely and deliberately aroused, or, when spontaneous in the beginning, are voluntarily fostered, one becomes responsible for the consequences of the passions, for one uses them as tools to commit an offense. If the passions arise spontaneously and become an incentive to an offense, one has the duty to repress them, but, if one commits an offense in the heat of spontaneous passion, one's liability is lessened in proportion to the intensity of the passion, because the law takes into consideration the difficulty of overcoming an intense spontaneous passion. If the passion is so sudden and intense that at the moment of the offense one's control over mind and will was completely lost, there is no liability for the offense, because it is not a human act but rather an act of a momentarily insane person.[4]

Special Circumstances which Aggravate Offenses

2039. Besides other aggravating circumstances, an offense is made worse: (1) by the greater dignity of the person who commits the offense, or against whom the offense is committed; (2) by the abuse of authority or office for the purpose of committing an offense (**Canon 2207**).

A *recidivus* in the terminology of law is a person who, after condemnation, again commits an offense of the same kind and under such conditions and circumstances (especially of time) as give good reason to conjecture that the person stubbornly

[4] Sole, "De Delictis et Pœnis," n. 37; Pesch, "Institutiones Psychologicæ," III, 402.

perseveres in his evil disposition. A person who repeatedly offends even against different kinds of laws also increases his liability (**Canon 2208**).

Liability of Accomplices in Offenses

2040. (1) Persons who conspire to commit an offense and also physically concur in the execution of the same, are all guilty in the same degree, unless circumstances increase or diminish the liability of some individual.

(2) In an offense which of its nature requires an accomplice, every party is equally guilty, unless the contrary appears from the circumstances.

(3) Not only the person who orders (*mandans*) the commission of an offense, and who is therefore the principal author of it, but also all who induce another or concur in its commission in any manner, contract the same liability, all other things being equal, as the perpetrator of the offense himself, if the offense would not have been committed without their help.

(4) If the assistance of the accomplices only facilitated the offense which would have been committed even without their help, they incur a lesser liability.

(5) A person who ceased to coöperate in the crime by timely and complete withdrawal of his influence or participation, is freed from all liability, though the executor of the offense, for other reasons proper to himself, perpetrated the misdeed; if he did not completely withdraw his influence, his retraction diminishes but does not entirely cancel liability.

(6) A person who coöperates in an offense by neglect of his office only, is liable in proportion to the obligation which he had in virtue of his office to prevent the offense.

(7) Praise of the accomplished offense, participation in its fruits, hiding or sheltering of the offender, and other acts done after an offense has been fully accomplished, may constitute new offenses, if in law these actions are forbidden under penalty; but, unless one had made an agreement with the offender about these acts (e.g., to share the spoils, to hide or shelter him, etc.) before the execution of the offense, one incurs no liability for the offense itself (**Canon 2209**).

The Code divides the persons concerned in an offense into

these groups: (1) the principals (nn. 1–2); (2) necessary accomplices, liable like the principals (n. 3); (3) accomplices with limited liability (n. 4); (4) negative accomplices (n. 6); (5) accomplices after the fact (n. 7).

2041. Persons who plot and scheme for the commission of an offense are, as a rule, all equally guilty, and, when one of them executes the plotted crime, each of the conspirators becomes equally liable for it, unless circumstances prove that some conspirators were more or less guilty than others. If a crime is of such a nature that it cannot be perpetrated without an accomplice (e.g., fornication, adultery, simoniacal contract or other forbidden agreements), each party is equally liable for the crime, unless circumstances prove the contrary (e.g., if a party was coerced by violence or fear to consent to fornication, adultery, etc.).

2042. The *mandans* is one who either commands another over whom he has authority, or commissions a person as his agent to perpetrate an offense. He is considered the principal author of the offense. Other accomplices in an offense are liable in the same degree as the principal, if the offense would not have been committed without their coöperation. The law of the Code is fair, for, if the participation in an offense is of such a character that the offense would not have been committed without the participation, the accomplice is equally the cause of the offense. When one's participation is the cause of the offense, cannot be determined by a general criterion, but must be judged from the circumstances in each case. Formerly many canonists and moralists enumerated a number of coöperators in the hexameter verse:

Jussio, consilium, consensus, palpo, recursus;
Participans, mutus, non obstans, non manifestans.

They also gave rules for determining the varying liability of the various accomplices. Other canonists, however, preferred to determine the liability in the same way as the Code now does.[5]

2043. Accomplices with limited liability are persons who participate in an offense remotely, and are thus not an efficacious cause of the offense, or if their participation is proximate, it is

[5] Lega, "De Delictis et Pœnis," n. 54.

not so important that the offense would have been prevented if they had refrained from taking part in its commission.

2044. The negative accomplices are persons who are bound by their office to prevent the offense and neglect to do so. The term "office" in reference to negative coöperation means any position, or employment, or state of life, which imposes the obligation of preventing an offense (e.g., parents may be liable for the offenses committed by minor children, if carelessness in their supervision is proved against them; masters may become liable for the wrongs of their servants; principals for the wrongs of their agents, etc.).

2045. The accomplices after the commission of an offense are not liable except when, before the commission of the misdeed, they agreed with the perpetrator to shelter, shield him, etc., and thereby caused or at least facilitated the offense. The accomplices after the fact commit an offense, if the law forbids this collusion under penalty (e.g., in the case of *excommunicati vitandi*, in the case of clerics excommunicated, interdicted, suspended, by sentence of the ecclesiastical court, cfr. Canon 2338).

Legal Consequences of an Offense

2046. From the commission of an offense arises:

(1) a penal action for the declaration (in penalties *latæ sententiæ*) or imposition (in penalties *ferendæ sententiæ*) of the penalty decreed in law, and for demanding satisfaction (e.g., for the scandal given);

(2) a civil action for the reparation of losses incurred, if the offense caused losses to another.

Both actions, criminal and civil, are to be conducted in accordance with Canons 1552–1959. The same judge who tries the criminal action can at the instance of the injured party try and decide the civil action (**Canon 2210**).

2047. All the principals and accomplices enumerated in Canon 2209, nn. 1–3, are jointly and severally obliged to pay the expenses and repair the damages caused to any persons by the offense, though the judge has condemned them only to pay a proportionate share (**Canon 2211**). As all these persons are equally liable for the offense, as stated in Canon 2209, each one is liable for the entire damage caused; and, if some of the prin-

cipals or accomplices do not pay their share, the others are obliged to pay the full amount.

TITLE III

OF ATTEMPTED OFFENSES

2048. Whosoever institutes or omits actions which of their very nature lead to the commission of an offense, but does not complete the offense either because he changes his mind or because its completion is impossible owing to the insufficiency or inadequacy of the means, is guilty of an *attempted offense.*

If all those actions were begun or omitted which would naturally lead to the commission of an offense, and would have sufficed to perpetrate it if another cause, beyond the will of the offender had not interfered, the attempt is called a *frustrated offense.*

A person who tries unsuccessfully to induce another to commit an offense, is guilty of an attempted offense. If the law decrees a special penalty for an attempted offense, the attempt constitutes a true offense (**Canon 2212**).

2049. An attempted offense induces liability which increases in proportion as it approaches nearer to the consummation of the offense, although the liability is always less than for the consummated offense. A frustrated offense is more culpable than a simple attempted offense. A person who of his own accord desisted after he had begun the commission of an offense, is free from all liability, if no damage was caused nor scandal given by the attempt (**Canon 2213**).

Canon 2213 treats of liability in the external forum, not of the forum of conscience. In conscience and before God a person may be fully guilty of the sin committed by the violation of a law, though he never went so far as to begin the action forbidden by law.

PART TWO

OF PENALTIES

Section I

OF PENALTIES IN GENERAL

2050. The Church has the innate and proper right, independent of all human authority, to punish her guilty subjects with both spiritual and temporal penalties. The admonition of the Council of Trent, Sessio XIII, cap. 1, De Reformatione, shall however be kept in view: from which it is evident that the Church does not favor nasty and rash use of extremely severe penalties and censures. The Council reminds the Ordinaries to consider their subjects as children and brethren in Christ and urges them to try as long as possible, by patience and kindness, to influence them to strive after virtue and to desist from vice (**Canon 2214**).

TITLE IV

OF THE DEFINITION, SPECIES, INTERPRETATION AND APPLICATION OF PENALTIES

2051. An ecclesiastical penalty is a deprivation of some temporal or spiritual benefit inflicted by the legitimate authority on the delinquent for his correction and in punishment of an offense (**Canon 2215**).

In the Church offenders are punished:

(1) with corrective (*medicinales*) penalties or censures;

(2) with vindicative penalties;

(3) with penal remedies and penances (**Canon 2216**).

The *corrective* (*medicinal*) penalties or censures are inflicted chiefly for the correction of the offender; if he amends and

gives satisfaction to the authorities who imposed these penalties, the offender is to be released from them, and for this reason they are not inflicted for a definite period of time. If a suspension or interdict is imposed for a definite period of time, it ceases to be a censure in the proper sense of the term, and becomes a vindicative penalty; excommunication cannot be imposed after the manner of a vindicative penalty (cfr. Canon 2255). *Vindicative penalties* (also called punitive) are, as the name suggests, punishments for the disturbance of ecclesiastical discipline caused by the offense; they are usually imposed for a definite period of time or for ever, and the fact that the offender amended and showed good-will does not entitle him to be released from the vindicative penalties. *Penal remedies and penances* are milder forms of penalties (cfr. Canons 2306–2313).

Terminology in the Matter of Penalties

2052. A penalty is called:

(1) *determinate* or specific, if the law or precept defines it specifically; *indeterminate* or general, if the law leaves it to the discretion of the judge or the superior to fix the penalty, either ordering or permitting him to punish the transgression of a law with appropriate penalties;

(2) *latæ sententiæ,* if a specific penalty is attached to a law or a precept in such a manner that it is incurred *ipso facto* by the commission of the offense; *ferendæ sententiæ,* if it must be inflicted (i.e., the law commands that it be inflicted) by the judge or superior;

(3) *a jure,* if a specified penalty is fixed by the law itself, whether *latæ* or *ferendæ sententiæ; ab homine,* if the penalty is inflicted either by way of special precept or by a condemnatory judicial sentence, even though the penalty is fixed by law; wherefore, a penalty *ferendæ sententiæ* attached to a law is a penalty *a jure* only before a condemnatory sentence is issued, but it becomes afterwards a penalty both *a jure* and *ab homine,* although it is considered only as a penalty *ab homine.*

A penalty is always understood to be *ferendæ sententiæ* unless the law explicitly states that it is *latæ sententiæ,* or that

it is incurred *ipso facto*, or *ipso jure*, or unless other similar terms are employed (**Canon 2217**).[6]

Interpretation of Penal Laws

2053. In the application of penalties the punishment should be in just proportion to the offense, due regard being had to the degree of liability and to the scandal or damage caused. Wherefore, attention must be paid not only to the subject matter and gravity of a law, but also to the age, knowledge, education, sex, state of life, and mental condition of the delinquent, to the dignity of the person against whom the offense was committed or who committed it, the purpose intended, the place and time of the offense, whether it was committed in the heat of passion or for reason of grave fear, whether the delinquent repented of his misdeed and tried to prevent its evil effects, and other similar circumstances.

Not only the circumstances which excuse from all liability but also those which excuse from grave guilt, excuse also from any penalty whether *latæ* or *ferendæ sententiæ* even in the external forum, provided the excuse is proved in the external forum.

Mutual injuries extinguish each other, unless one party deserves condemnation on account of the greater gravity of the injury done by him. In the latter case the fact that the injury was mutual may on occasion mitigate the penalty (**Canon 2218**).

2054. In penalties the milder interpretation is to be applied. Even when one doubts whether a penalty inflicted by a competent superior is just, the punishment must nevertheless be accepted in both the external and internal forum, except in a case of appeal *in suspensivo* (i.e., an appeal which suspends the sentence). A penalty is not to be extended from person to person, nor from one case to another, though there is the same or even a greater reason for holding a person guilty; if, however, several persons participated in the commission of a single offense, the precept of Canon 2231 must be observed (**Canon 2219**).

The Code here repeats the principles of the law of the Decretals in the interpretation of penalties: *Odia restringi et*

[6] Sole, "De Delictis et Pœnis," n. 71.

favores convenit ampliari; In pœnis benignior est interpretatio facienda.[7] If the material facts are doubtful, or if the terms of the law do not with certainty cover a certain case, the offender is not liable for the penalty of law.[8] If a competent superior has imposed a penalty, and the subject doubts whether the penalty is justified, he is obliged to submit to it both in conscience and in the external forum, for the stability of ecclesiastical discipline and the maintenance of law and order demand that the action of the superior be not frustrated by doubts of his subject over the justice of the superior's action.[9]

TITLE V

OF SUPERIORS WHO HAVE COERCIVE POWER

2055. Superiors who have authority to make laws or to impose precepts, may also attach penalties to the law or precept. Persons who possess judicial power only, can merely impose by the process of law the penalties legitimately attached to a law or precept. The vicar-general has no power to inflict penalties unless that power is conferred on him by special mandate (**Canon 2220**). If the vicar-general is at the same time *officialis* or judge of the diocesan Curia, he has power to try cases and inflict the penalties of the law. Ordinarily he is not to be the judge of the diocesan Curia (cfr. Canon 1573).

2056. Persons who have legislative power may, within the limits of their jurisdiction, enforce with a proper penalty—or increase the statutory penalty attached to—not only their own laws and those of their predecessors, but also, for reason of peculiar circumstances, the divine law and ecclesiastical laws of a superior authority, provided the latter laws are in force in their territory (**Canon 2221**).

Though Canon 2221 states that an inferior authority may increase the penalty attached to a law of a superior authority, if special circumstances necessitate it, Canon 2247 declares that the Ordinaries cannot attach a censure reserved to themselves to laws to which a censure reserved to the Holy See is attached (cfr. Canon 898; above, Vol. I, n. 809).

[7] *Regulæ Juris in Libro Sexto Decretalium,* 15 and 49.
[8] Sole, "De Delictis et Pœnis," nn. 75–80.
[9] *Decretales Greg. IX,* c. 5. *De Clerico Excommunicato,* etc., lib. V, tit. 27.

Punishment for Violation of Laws which Have No Penal Sanction

2057. Even though there is no penalty attached to a law, the legitimate superior may, nevertheless, even without previous threat of penalty, punish its transgression with some just penalty, if the scandal given or the special gravity of the violation demands it. Otherwise, the delinquent may not be punished unless he has first been admonished and threatened with a penalty *latæ* or *ferendæ sententiæ* in case of transgression, and nevertheless violates the same law.

Even though it is only probable that a person committed an offense, or even though criminal action against one who is known with certainty to have committed an offense is barred by prescription, the legitimate superior has not only the right but the duty to refuse to promote (to higher orders) a cleric of whose fitness he is not certain, and, for the sake of avoiding scandal, to prohibit a cleric the exercise of the sacred ministry, or even remove him from office in accordance with the rules of law. All these proceedings do not have the nature of a penalty (**Canon 2222**).

2058. Ordinarily no penalty is to be inflicted for the violation of the divine or ecclesiastical law, if the law does not decree a penalty. The offender is first to be warned and threatened with a penalty, and, if he disregards the warning and threat, proceedings can be instituted to inflict the penalty. Only in cases where great scandal or the special gravity of the violation of a law without a penal sanction demands immediate action may the superior punish without previous warning. In laws to which a penal sanction is attached, the law itself serves as a warning, and, if such a law is violated, proceedings for punishment may be immediately taken; the formalities of the criminal procedure must be observed (cfr. Canons 1933–1959).[10] Canon 2195 stated that there is no offense properly so called, unless the law or precept which was violated had a penal sanction attached to it; consequently, there can be no criminal action and punishment. Since, however, the spiritual welfare of the Church demands reparation of scandal and atonement of serious misconduct, the law gives to the ecclesiastical superiors author-

[10] Sole, "De Delictis et Pœnis," nn. 85–91.

ity to take immediate action in case of such scandal or misconduct.

Rules by which the Judge or Superior Must Be Guided in the Imposition of Penalties

2059. In imposing the penalties, the judge may not increase a specific penalty, unless extraordinary aggravating circumstances demand it. If the law in stating a penalty *ferendæ sententiæ* employs optional terms (e.g., *prudenti Ordinarii judicio determinanda, ad arbitrium Ordinarii pro gravitate culpæ puniatur,* etc.), it is left to the discretion and conscience of the judge to inflict the penalty, or, if the penalty is specific, to moderate it.

If, however, the law employs words implying a precept to impose a penalty, the penalty of the law is ordinarily to be imposed, but it is left to the conscience and discretion of the judge or superior:

(1) to delay the imposition of the penalty to a more opportune time, if it is judged that greater evils may follow from too hasty punishment of the delinquent;

(2) to refrain from inflicting the penalty if the delinquent has shown complete amendment and has repaired the scandal, or if he has been or will be sufficiently punished by the civil authorities;

(3) to moderate a specific penalty or to employ instead some penal remedy or penance, if there is some circumstance which considerably diminishes his liability, or if, though the offender has amended or been sufficiently punished by the civil authorities, the judge or superior deems it advisable to add some mild punishment.

It is, as a rule, left to the discretion of the superior to declare a penalty *latæ sententiæ;* but he must issue the declaratory sentence, if an interested party demands it, or if the public welfare requires it (**Canon 2223**). On the right of parties to denounce a delinquent, cfr. Canon 1935.

2060. Generally speaking, there are as many penalties as there are offenses. If, however, on account of the great number of offenses there would be too great an accumulation of penalties to be inflicted, it is left to the discretion of the judge

either to impose the severest of all the penalties incurred, adding if necessary some penance or penal remedy, or to reduce the various penalties equitably with due regard to the number and gravity of the offenses. If a distinct penalty is decreed in law for an attempted offense and another for its actual perpetration, and the offender has admitted the perpetration, he is to be punished only with the penalty decreed for the accomplished offense (**Canon 2224**).

2061. If a penalty is declared or inflicted by judicial sentence, the precepts of the canons relative to the pronouncement of a judicial sentence shall be observed. If, however, a penalty of either *latæ* or *ferendæ sententiæ* has been ordained by way of special precept, it shall ordinarily be declared or inflicted in writing or before two witnesses, and the reasons for the penalty shall be indicated, without prejudice to the precept of Canon 2193 regarding the suspension *ex informata conscientia* (**Canon 2225**).

2062. In penalties *a jure* the criminal procedure must be followed: investigation to collect proofs (which is omitted if the offense is notorious or altogether certain), bill of accusation by the *promotor justitiæ* (prosecuting attorney), and summons of the offender. If he admits the offense, he may ordinarily be dismissed with a rebuke; but in certain offenses (cfr. Canon 1918) a mere rebuke is not sufficient. If he denies the offense and desires to defend himself, the judge shall according to his discretion allow him sufficient time to prepare his proofs and to present witnesses, while the prosecutor meanwhile prepares to prove the offense. The accused must have an attorney for his defense, who is appointed by the court, if not designated by the defendant; after the hearing of the evidence, the publication of it follows, then the declaration that case is closed (i.e., no further evidence can be offered); time is given for the preparation of the written defence, which is exchanged between the parties (here the prosecutor and the accused) and the time set for reply; a final oral argument follows, if the judge sees fit to permit it; finally the case goes to the judge or judges, who within a reasonable time issue the sentence in accordance with the rules of Canons 1868–1877. In all judicial acts a notary, as clerk of the court, records the proceedings.

In the imposition of penalties attached to a special precept

of an ecclesiastical superior, no judicial proceedings are required, but the principles of elementary justice must be observed—namely, there must be sufficient proof of the violation of the precept, opportunity must be given to the accused to defend himself, and all circumstances material to the fact must be duly considered.

TITLE VI

OF THE PERSONS SUBJECT TO THE COERCIVE POWER

2063. Persons who are bound by a law or a precept are liable for the penalty attached to the law or precept, unless they are explicitly exempted. If a later penal law changes a former law, and if a person has already committed an offense before the new law was made, the law which is more favorable to the offender is to be applied. If the new law abolishes the former law or the penalty only, the penalty ceases at once, except in the case of a censure already contracted. The penalty once incurred follows the offender wherever he goes, even after the superior has gone out of office, unless the contrary is explicitly stated (**Canon 2226**).

2064. The general laws of the Church exert their binding force everywhere; the particular laws of dioceses, provinces, and countries bind those who have a domicile or quasi-domicile in the place (cfr. Canons 13–14; above, Vol. I, n. 12). Among the persons exempted from the penalties of law are the Cardinals and bishops in accordance with Canons 2227. On the exemption of exempt religious from the penalties of diocesan laws, cfr. Volume I, n. 534.[11]

2065. The penalty follows the person wherever he goes. The fact that a penalty was incurred for the violation of a diocesan law, and that the person who incurred the penalty changes his domicile, does not relieve him from the penalty. The fact that the superior who by precept inflicted a penalty dies, or otherwise goes out of office, does not cancel the penalty, if it was inflicted by a legitimate document or before two witnesses (cfr. Canon 24). A penalty inflicted by a superior *ad beneplacitum nostrum* expires when the superior goes out of office, for that

[11] Lega, "De Delictis et Pœnis," n. 119.

clause makes the penalty a temporary one (i.e., for the duration of office of the superior).[12] The reservation of censures and absolution from them are treated in Canons 2245–2254.

2066. The Roman Pontiff alone can inflict on, or declare a penalty against the persons enumerated in Canon 1557, § 1. Cardinals are not subject to the penal law, unless they are explicitly mentioned, nor are bishops subject to penalties of suspension and interdict *latæ sententiæ* (**Canon 2227**).

2067. A penalty fixed by law is not incurred unless the specific offense has been fully committed in accordance with the proper meaning of the terms of the law (**Canon 2228**). The evil intention alone to violate a law to which a penalty is attached does not suffice to make a person liable, but the execution of the precise act (or the omission) stated in the law is necessary to incur the penalty (cfr. Canon 19; above, Vol. I, n. 16).

Ignorance and Other Mental Conditions as Excuses from Penalties

2068. *Affected* (pretended) ignorance of either the law or of its penalty only does not excuse from any penalties *latæ sententiæ*, even though the law contains the terms mentioned in the following paragraph (**Canon 2229, § 1**).

If the law has the words, *præsumpserit, ausus fuerit, scienter, studiose, temerarie, consulto egerit,* or other similar terms which demands full knowledge and deliberation, any diminution of liability, either on the part of the intellect or on the part of the will, exempts from the penalties *latæ sententiæ* (**Canon 2229, § 2**).

If the law does not have these terms:

(1) *crass* or *supine* ignorance of the law or of the penalty only does not exempt from any penalty *latæ sententiæ;* ignorance which is not crass or supine, excuses from the medicinal, but not from the vindicative penalties *latæ sententiæ;*

(2) drunkenness, omission of due care, mental weakness, and heat of passion do not excuse from penalties *latæ sententiæ,* if notwithstanding the diminution of the liability the action was gravely sinful;

[12] Sacred Cong. of the Propaganda, October 20, 1884 (*Collectanea de P. F.*, II, n. 1628).

(3) grave fear does not exempt from penalties *latæ sententiæ,* if the offense entails contempt of the faith or of ecclesiastical authority, or public injury of souls (**Canon 2229,** § 3).

Though the offender is excused from the censures *latæ sententiæ* when his ignorance is not crass or supine, he may nevertheless be punished, if the case calls for it, with some other appropriate penalty or penance (**Canon 2229,** § 4).

2069. As every subject is under obligation to inform himself of the laws which concern him, ignorance of the law is no excuse. But, since there can be many circumstances which make the ignorance more or less culpable, the Code distinguishes between the various degrees of ignorance. The terms, *ignorantia affectata, crassa, supina, graviter seu leviter culpabilis,* have been discussed and defined by canonists and moralists long before the promulgation of the Code. *Affected* ignorance is never admitted as an excuse. *Crass* and *supine* ignorance excuse from penalties *latæ sententiæ* in laws which require full knowledge and deliberation; in other laws crass and supine ignorance do not excuse from such penalties. It is a matter of debate among canonists whether gravely sinful ignorance is to be called *crass* (or supine), but the Code seems to imply that such ignorance is not crass or supine, for it states that ignorance which is not crass or supine excuses from medicinal penalties (i.e., censures), but not from vindicative penalties *latæ sententiæ.* Now, no penalty at all is incurred unless there is grievous guilt in the transgression of a law; if, then, the law of the Code grants mercy to ignorance, it must mean ignorance which is even gravely sinful, provided it is not grossly culpable so as to deserve the name of crass or supine ignorance.[13] Canon 2202 stated, as we saw above (n. 2034), that ignorance of the penalty only does not excuse from liability, but this general rule is somewhat modified in Canon 2229, § 3, n. 1, which exempts from medicinal penalties *latæ sententiæ,* even though one knew the law but was ignorant of the penalty, provided the ignorance is not crass or supine, and by Canon 2229, § 2, in cases when full knowledge of the law and the penalty is required.

In discussing the excuses from penalties, the Code speaks

[13] Wernz, "Jus Decretalium," VI, n. 21; Lega, "De Delictis et Pœnis," n. 42, (6); Sole, "De Delictis et Pœnis," n. 114; Vermeersch-Creusen, "Epitome," III, n. 422.

only of penalties *latæ sententiæ,* for in the case of penalties *ferendæ sententiæ* (which do not take effect against the offender unless the ecclesiastical judge or superior declares sentence against him), the law leaves it to the discretion and conscience of the judge or superior to examine into and make allowance for mitigating circumstances.

Punishment of Youths Who Have Not Reached the Age of Puberty

2070. Children who have not yet attained the age of puberty are excused from the penalties *latæ sententiæ,* and should be punished with educational corrections rather than with censures and other graver vindicative penalties. Persons of the age of puberty who induce children under the age of puberty to break the law, or who coöperate with them in the manner specified in Canon 2209, §§ 1–3, incur the penalty decreed by the law (**Canon 2230**).

The Code settles the controversy among canonists who wrote before the promulgation of the Code as to whether children who were very near to the age of puberty (i.e., over ten and a half years) incurred the penalties *latæ sententiæ.*[14] The Code does not free them from the penalties *ferendæ sententiæ,* but the judge or superior must make allowance for tender age (cfr. Canon 2204).

Penalties of Accomplices

2071. If several persons concurred in the perpetration of an offense, though the law speaks of one only, all who coöperate in the manner specified in Canon 2209, §§ 1–3, are liable for the same penalty, unless the law explicitly states the contrary; other accomplices, however, do not incur the same penalty, but shall be punished with some other just penalty at the discretion of the superior, unless the law provides a special penalty for such accomplices (**Canon 2231**).

Automatic Effect of Penalties Latæ Sententiæ

2072. A penalty *latæ sententiæ,* whether medicinal or vindicative, automatically (*ipso facto*) binds the offender in both

[14] Sole, "De Delictis et Pœnis," n. 120.

the internal and external forum, if he is conscious of his offense. However, before a declaratory sentence has been issued against the offender, he is excused from the observance of the penalty, whenever he cannot observe it without loss of good reputation, and, subject to the precept of Canon 2223, § 4, no one can demand that he shall observe the penalty in the external forum, unless the offense is notorious. When a declaratory sentence is issued, the penalty has a retroactive effect to the moment when the offense was committed (**Canon 2232**).

The retroactive effect may become important, for example, in offenses to which *ipso facto* loss of the income of one's benefice is decreed by law. Since it is a great hardship for a delinquent whose offense is still occult (e.g., an excommunication or a suspension incurred by an occult offense) to observe the penalty, if he thereby publicly betrays his guilt or arouses suspicion against himself, Canon Law does not demand of the culprit to execute the penalty on himself, but permits him to act in public as though he had not incurred the penalty, until the competent authority has issued the declaratory sentence.

Manner of Inflicting Penalties

2073. No penalty can be inflicted unless it is proved with certainty that the offense has been committed, and that prosecution is not barred by legitimate prescription. Though this be certain, the penalty of a censure cannot be inflicted, unless the delinquent has first been rebuked and admonished to recede from his contumacy in accordance with Canon 2242, § 3, and such time for repentance has been given him as the judge or superior deems proper in the particular case. If the delinquent remains obstinate, the censure may be inflicted (**Canon 2233**).

In this Canon the question of inflicting penalties *ferendæ sententiæ* is considered, for penalties *latæ sententiæ* are automatically contracted by the offense. As a rule, the commission of an offense must be certain before a penalty can be inflicted. Canon 2222 describes the measures which may be taken against a cleric whose offense is only probable, and against a cleric whose certain offense is barred from prosecution by prescription. Under certain circumstances, penalties other than censures may be inflicted without previous warning (cfr. Canon

2222). The Committee for the Authentic Interpretation of the Code declared that the violation of a special precept which was imposed with the threat of a censure *ferendæ sententiæ* may be punished with the censure as soon as the violation is proved without the necessity of a new admonition.[15]

2074. The person who has committed several offenses shall not only be punished more severely, but shall also be subjected to surveillance or other penal remedy, if in the discretion of the judge the case demands it (**Canon 2234**).

2075. Unless they are punished by law as distinct offenses, frustrated offenses or attempted offenses may be punished with an appropriate penalty in proportion to the gravity of the guilt, subject to the provision of Canon 2213 for cases in which all liability for attempted offenses ceases (**Canon 2235**). If a frustrated or attempted offense is punished in law with a specific penalty, the judge ordinarily must impose the specified penalty (cfr. Canon 2223).

TITLE VII

OF THE REMISSION OF PENALTIES

2076. The remission of a penalty by absolution (in the case of censures) or by dispensation (in the case of vindicative penalties) may be granted only by him who has inflicted the penalty, or by his competent superior or successor, or by him to whom this faculty has been committed. A person who can exempt others from the observance of a law, can also remit the penalty attached to that law. A judge who *ex officio* imposes a penalty ordained by a superior, cannot remit it after he has imposed it (**Canon 2236**).

Censures are inflicted for the purpose of overcoming the contumacy of the offender. If he amends and gives satisfactory signs of his sincere sorrow for his violation of the law and of his readiness to make satisfaction, the purpose of the penalty has been accomplished, and he is to be absolved from the censure. Vindicative penalties are imposed irrespective of the offender's sorrow for the offense and of his amendment; they are punishments pure and simple for the expiation of an offense,

[15] Cfr. App. III, 84.

and last either for ever or for a specified period of time, unless the competent authority grants the favor of a dispensation from the penalty. The ecclesiastical superior is obliged by law to grant absolution from censures as soon as the offender amends and gives due satisfaction, but, in the case of vindicative penalties, it is left to the prudent judgment of the superior to concede or refuse dispensation from the penalties to an amended offender. If one has authority to dispense from the observance of a law, one can also remit the penalty attached to the law in accordance with the *Regula Juris in Sexto*, 35: "Plus semper in se continet quod est minus." The penalty is an accessory or secondary part of a law. With reference to the power of a judge in imposing penalties, cfr. Canon 2223.

Faculties of the Ordinary in Penalties of the Common Law

2077. In public cases the Ordinary may remit the penalties *latæ sententiæ* ordained by the common law except the following:

(1) cases litigated in court;

(2) censures reserved to the Apostolic See;

(3) penalties which incapacitate the offender from obtaining benefices, offices, dignities, functions in the Church, or an active and passive vote; also penalties which deprive the offender of an active and passive vote, or which entail perpetual suspension, infamy of law, or deprivation of the right of patronage or of a privilege or favor granted by the Apostolic See (**Canon 2237,** § 1).

In occult cases, without prejudice to the concessions of Canons 2254 and 2290, the Ordinary may either personally or through another remit the penalties *latæ sententiæ* ordained by the common law, with the exception of the censures reserved to the Apostolic See *specialissimo* or *speciali modo* (**Canon 2237,** § 2)

A case is in litigation as soon as the offender has been legitimately summoned to appear in court, either in a criminal trial to answer the charge made against him by the prosecutor, or in a civil trial to answer for the damages caused by an offense (cfr. Canon 1725). The Code gives faculty to the Ordinaries (cfr. Canon 198 on the persons comprehended by that term)

to remit penalties *latæ sententiæ* only; the penalties *ferendæ sententiæ* are considered as penalties *ab homine* (cfr. Canon 2217), which can be remitted only by the Ordinary whose court imposed the penalty, or the Ordinary to whose court the case came by appeal.[16] With reference to public and occult cases, cfr. Canon 2197 (above, n, 2028). In public cases the power of the Ordinary in remitting penalties *latæ sententiæ* decreed by the common law is far more restricted than in occult cases. Note that the Ordinary cannot, except by special indult, absolve from censures reserved to the Holy See (whether simply, or specially, or most specially reserved), if the case is public.

2078. The remission of a penalty extorted by violence or grave fear is invalid in law (**Canon 2238**). The law of the Decretals had the same rule in reference to violence or fear.[17] It is not certain whether a distinction between unjust and justified threat is admissible in Canon 2238. Some commentators are of the opinion that the remission of the penalty is null and void, even though it is obtained through fear which the subject had a right to create, e.g., by threatening the lower superior to denounce him to the higher authorities;[18] others hold that justified threat (and consequent fear) does not invalidate the remission or pardon of a penalty.[19]

2079. A penalty may be validly remitted whether the offender be present or absent. The remission can be either absolute or conditional, and in the external forum or in the internal only. Though a penalty may be remitted orally, it is proper that its remission should be given in writing, if it has been imposed by a written instrument (**Canon 2239**). In reference to the prescription of penal actions, the law of Canon 1703 is to be observed (**Canon 2240**).

[16] Lega, "De Delictis et Pœnis," n. 131; Sole, "De Delictis et Pœnis," n. 147; Ayrinhac, "Penal Legislation," nn. 67-70; Eichmann, "Strafrecht," 70–73; Chelodi, "Jus Pœnale," n. 30; Haring, "Katholisches Kirchenrecht," 932.

[17] *Liber Sextus*, c. unic., *De iis quæ vi metusve causa fiunt*, lib. I, tit. 20.

[18] Sole, "De Delictis et Pœnis," n. 151.

[19] Vermeersch-Creusen, "Epitome," III, n. 432; Ayrinhac, "Penal Legislation," n. 71.

Section II

OF PENALTIES IN PARTICULAR

TITLE VIII

OF MEDICINAL PENALTIES OR CENSURES

Chapter I

OF CENSURES IN GENERAL

2080. A censure is a penalty by which a baptized person who is delinquent and obstinate is deprived of some spiritual goods or of temporal goods annexed to the spiritual, until he recedes from his obstinacy and is absolved. Censures, especially those *latæ sententiæ* and most of all excommunication, should be inflicted only with moderation and great caution (**Canon 2241**).

As censures deprive the offender of spiritual goods, and are a very serious punishment, the Council of Trent [20] as well as the Code warn the Ordinaries against the rash infliction of censures—especially excommunication, the most severe of the censures.

2081. Only offenses which are external, grave, consummated or complete, and combined with obstinacy, are punished with censures. A censure may be inflicted even on delinquents whose identity is unknown (**Canon 2242,** § 1).

When there is question of censures *ferendæ sententiæ,* a person is considered contumacious who, notwithstanding the admonitions spoken of in Canon 2233, does not desist from the offense, or refuses to do penance for the offense and make due reparation for the damages and scandal caused thereby. To incur a censure *latæ sententiæ,* the transgression of a law or a precept to which a penalty *latæ sententiæ* is attached suffices, unless the offender is excused from the penalty by a legitimate cause (**Canon 2242,** § 2).

A person is considered to have desisted from his obstinacy, when he has truly repented of his offense, and has at the same

[20] Sessio XXV, cap. 3, *De Reform.*

time made proper satisfaction for the damages and scandal caused, or has at least earnestly promised to do so. The judgment on the sincerity of the repentance, or the sufficiency of the satisfaction, or the sincerity of the promise, rests with the one from whom absolution from the censure is requested (**Canon 2242,** § 3).

2082. With reference to the nature of an offense by which a law is violated, cfr. Canon 2195 (above, n. 2025). The violation must be *grave* to be punished with a censure, and the gravity is judged by the external act, not by the interior disposition of the mind. If the external act violates the law seriously, culpability is presumed in the external forum until excuse from grave guilt is proved (cfr. Canon 2200). Contumacy of the offender is implied in the deliberate violation of a law to which a censure *latæ sententiæ* is attached, and therefore the censure is incurred immediately on the breaking of such a law. In the violation of laws to which a censure *ferendæ sententiæ* is attached, the offender is not considered necessarily contumacious, and, therefore, cannot be punished by the superior with the censure until the latter has admonished him, and the admonition has gone unheeded.

Imposition of Censures by Judicial Sentence

2083. Censures inflicted by judicial sentence take effect as soon as they are pronounced, and an appeal *in devolutivo* only is granted (i.e., the censure is not suspended by recourse to the higher superior). Similarly, from censures inflicted by way of precept, only a recourse *in devolutivo* is allowed.

Appeal or recourse from a judicial sentence or a precept threatening censures (even *latæ sententiæ*) not yet contracted, suspend neither the sentence (or precept) nor the censures, if matters are involved in which the law does not admit appeal or recourse with suspensive effect. If the matter is one in which the law grants appeal or recourse *in suspensivo,* the censures are suspended, but the obligation remains to observe what has been commanded by the judicial sentence (or the precept), unless the offender appeals or has recourse, not only from the penalty, but from the sentence (or precept) itself (**Canon 2243**).

2084. The distinction between an appeal *in suspensivo* and

in devolutivo is explained by Canon 1889 (above, n. 1809). If a censure is threatened by judicial sentence (or by precept) but has not yet been incurred, appeal or recourse against the threatened censure or against the sentence (or precept) together with the censure suspends the censure or the sentence (or precept) and censure, if it is a matter in which appeal or recourse *in suspensivo* is permitted. There are, however, matters in which no recourse *in suspensivo* against sentence (or precept) is permitted, but merely recourse *in devolutivo*—e.g., paternal precepts given in a canonical visitation (cfr. Canons 345, 513), recall of the faculty to preach (cfr. Canon 1340), division, union, or transfer of parishes (cfr. Canon 1428), removal or transfer of pastors, punishment of clerics for violating the law of residence, of clerics guilty of concubinage, of pastors who neglect their parochial duties, and suspension *ex informata conscientia* (cfr. Canon 2146). Generally speaking, whenever the ecclesiastical superior acts or gives orders in the course of his administrative duties, no recourse against his acts or his orders *in suspensivo* is permitted.[21]

Multiplication of Censures

2085. Not only censures of different species, but also those of the same species, may be multiplied in one and the same offender (**Canon 2244,** § 1).

Censures *latæ sententiæ* are multiplied in the following ways: (1) if various offenses, to each of which a censure is attached, are committed either by the same or by distinct actions; (2) if the same offense to which a censure is attached is committed repeatedly in such a manner that there are several distinct offenses; (3) if an offense which is punished with diverse censures by various superiors is committed once or repeatedly (**Canon 2244,** § 2).

Censures *ab homine* are multiplied, if each of several precepts or several sentences, or several distinct parts of the same precept or sentence, inflict a censure (**Canon 2244,** § 3).

Canon 2224 stated that ordinarily there are as many penalties as there are offenses committed. If a person strikes a

[21] Bened. XIV, Const. "Ad Militantis," March 30, 1742; Gasparri, "Fontes Cod. Jur. Can.," I, 723.

cleric at various times, he incurs an excommunication each time; the same is true of all censures *latæ sententiæ,* which are multiplied as often as the offense is repeated. The censures *ab homine* (i.e., a judicial sentence or a precept of the superior by which the subject is ordered to do or omit something under pain of incurring *ipso facto* a censure in case of wilful disobedience) are not multiplied in the same manner as the *latæ sententiæ* censures *a jure* (for example, there is no multiplication of the censure by repeated violation of the same precept), but are multiplied only in the manner pointed out in § 3. If several superiors (e.g., the Holy See, the local Ordinary, a Provincial or National Council) have ordained the *same* censure against one and the same offense (e.g., marriage before a non-Catholic minister of religion), the censure is not multiplied, for Canon 2244, § 2, n. 3, states that the censures are multiplied if *diverse* censures are imposed on the same offense by various superiors.

Division of Censures and Their Reservation

2086. Censures are either *reserved* or *non-reserved* (**Canon 2245,** § 1).

Censures *ab homine* are reserved to him who inflicted the censure or issued the sentence, or to his competent superior, or his successor, or his delegate. Of the censures reserved *a jure,* some are reserved to the *Ordinary,* and others to the Apostolic See (**Canon 2245,** § 2).

Of the censures reserved to the Apostolic See, some are reserved *simpliciter,* others *speciali modo* and other *specialissimo modo* (**Canon 2245,** § 3).

A censure *latæ sententiæ* is not reserved, unless this is explicitly stated in the law or precept, and in case of a doubt in law or in fact (*dubium juris vel facti*) the reservation does not take effect (**Canon 2245,** § 4).

The distinction between penalties *ab homine* and *a jure* is defined by Canon 2217 (cfr. above, n. 2052). If an Ordinary inflicts a censure by way of special precept, or through his court imposes a penalty *ferendæ sententiæ* by the so-called condemnatory sentence, nobody else than that Ordinary, or his delegate, or his successor in office, or his higher superior, can free the subject from the censure.

2087. A censure should not be reserved unless the peculiar gravity of the offenses and the necessity of maintaining ecclesiastical discipline and correcting the morals of the faithful more effectively demand the reservation. A reservation is to be interpreted strictly. Reservation of a censure which prevents the reception of the sacraments implies the reservation of the sin, to which the censure is attached. If, however, a person is excused from the censure, or has been absolved from it, the reservation of the sin ceases altogether (**Canon 2246**). The *strict* interpretation means that the law imposing a censure is to be taken in the proper sense of the words employed without extending the meaning of its terms. If it is doubtful whether the action of the offender is covered by the law, or whether or not an excuse saves him from incurring the censure, the offender is not to be considered censured.

2088. If a censure is reserved to the Apostolic See, the Ordinary cannot attach to the same offense another censure reserved to himself (**Canon 2247,** § 1).

The reservation of a censure in some particular territory has no force outside the limits of that territory, even if the person who incurred the censure goes outside the territory precisely for the purpose of obtaining absolution. A censure *ab homine,* however, is reserved everywhere, so that the censured person cannot be absolved anywhere without the proper faculties (**Canon 2247,** § 2).

If a confessor, in ignorance of the reservation, has absolved a penitent from the censure and sin, the absolution from the censure is valid except in the case of censures *ab homine* and censures reserved to the Apostolic See *specialissimo modo* (**Canon 2247,** § 3).

Though the same offense may be punished with a different censure by various superiors—e.g., the local Ordinary and the Holy See (cfr. Canon 2244, § 2, n. 3)—Canon 2247, § 1, restricts this power of inferior Ordinaries if the Holy See has attached to an offense a censure reserved to itself. It is not certain whether the law of an Ordinary is invalid, if, despite the prohibition, he attaches to a papal reserved censure a censure reserved to himself; it seems, however, that the term "nequit" expresses equivalently the nullity of the law of an Ordinary. Persons who incurred a reserved censure ordained by particular

law can go outside the territory where that law is binding, and be absolved from the censure, even though they go outside the territory purposely to get absolution. In the former law such persons could not be absolved if they went outside the territory for the sole purpose of evading the reservation. On the absolution from reserved sins, cfr. Canon 893 (Volume I, nn. 799, 815).

2089. Any censure once contracted cannot be removed except by legitimate absolution. Absolution cannot be denied whenever the offender ceases to be obstinate, as declared in Canon 2242, § 3. The one who absolves from the censure may, if the case demands it, impose an appropriate vindicative penalty or penance for the expiation of the offense. If a censure has been removed by absolution, it revives only in cases where a penance or other obligation has been imposed under penalty of relapse into the censure and has not been performed (**Canon 2248**).

The censure once incurred binds the offender, even though the law is changed later on, and the penalty abolished (cfr. Canon 2226). Canon 2236 shows what persons can dispense from vindicative penalties. A confessor who has no jurisdiction in the external forum cannot impose a vindicative penalty for the expiation of an offense, but only a penance proportioned to its gravity. In some cases the law itself declares that the person absolved from a censure again incurs it through failure to fulfill a condition (cfr. Canon 2254, § 1). To grant absolution from a censure under condition that, if the obligation or penance imposed is not fulfilled, the penitent shall fall into the same censure, is equivalent to a precept imposed under threat of a censure *latæ sententiæ*. Consequently, only a superior who has power to attach a censure to his precept can absolve under such a condition, unless the law gives the confessor faculty to absolve under that condition.[22]

2090. If a person has incurred several censures, he may be absolved from one, while the others remain. The petitioner for absolution must indicate all cases from which he desires absolution, for otherwise the absolution is valid only for the case he mentioned. If, however, the absolution is general, though the petition referred to one particular case only, it is valid also for those cases which were concealed in good faith, with the

[22] Sole, "De Delictis et Pœnis," n. 152; Vermeersch-Creusen, "Epitome," III, n. 447.

exception of censures reserved to the Holy See *specialissimo modo*: even a general absolution is of no avail for censures concealed in bad faith (**Canon 2249**).

Canon 2249 is important in the case of the multiplication of censures mentioned in Canon 2244. The rule of Canon 2249 has reference to censures inflicted *a jure*, for censures *ab homine* are always reserved to the superior who inflicted the same (cfr. Canon 2245, § 2). If a person who has incurred several censures asks for absolution, but by mistake forgets to mention one or other of the censures, and absolution is given to him in the general form "ab omnibus censuris," he is free from all censures, provided the one absolving had authority to absolve from all the censures with which the offender was burdened. Censures reserved to the Holy See *specialissimo modo* and those concealed in bad faith are not included in this liberal concession of Canon 2249.

Relation between Absolution from Sin and from Censure

2091. In the case of a censure which does not prevent the reception of the sacraments, the censured person who is properly disposed and desists from his contumacy can be absolved from his sins, while the censure remains (**Canon 2250,** § 1).

In the case of a censure which prevents the reception of the sacraments, the censured person cannot be absolved from the sins until he has been first absolved from the censure (**Canon 2250,** § 2).

Absolution from a censure in the sacramental forum is included in the usual form of absolution from sins given in the ritualistic books; in the non-sacramental forum, absolution from a censure may be given in any form, but for the absolution from excommunication it is proper to use, as a rule, the formula contained in these same books (**Canon 2250,** § 3).

Excommunication and personal interdict entail the prohibition to receive the sacraments, until absolution has been obtained from these censures. If the priest has no faculty to absolve from these censures, he cannot absolve from the sins by which one incurred the censures. If there is question of suspension, and the suspended cleric is sorry for his sins and willing to make amends for the violation of law, the confessor can

absolve him from his sins, even though he does not have the faculty to absolve him from the suspension.

Absolution from Censures in the External and Internal Forum

2092. If absolution from a censure is given in the external forum, it holds good for both the external and the internal forum; if it is given in the internal forum, the person who obtained such an absolution may, if no scandal is caused thereby, conduct himself as if absolved even in his actions of the external forum. The censure, however, may be enforced by the superiors of the external forum, and the subject is bound to obey until he has been absolved in the external forum, unless the granting of absolution in the internal forum is proved, or is at least legitimately presumed in the external forum (**Canon 2251**).

The Code here repeats the former law on the effect of an absolution from a censure in the internal forum.[23] If a confessor asks the Ordinary for faculties to absolve a person, and in the concession of the faculties there is no express limitation to the internal forum, the faculties are considered granted for both forums (cfr. Canon 202; above, Volume I, n. 156).

Absolution from Censures in Danger of Death

2093. Persons who in danger of death are absolved from a censure *ab homine* or from a censure reserved *specialissimo modo* to the Apostolic See by a priest who has no special faculty, are after their recovery obliged under pain of relapse into the censure to have recourse to the person who inflicted the censure, if there is question of a censure *ab homine*. In the case of a censure *a jure*, recourse must be had to the Sacred Penitentiary, or to a bishop or other ecclesiastic who has the faculty to absolve, as declared in Canon 2254, § 1. The censured persons must obey the orders of the absolving authority (**Canon 2252**).[23a]

Canon 882 states that in danger of death every priest can absolve from all sins and censures (cfr. above, Volume I, n. 787). If it is a censure *ab homine* (cfr. Canon 2217), or a censure reserved to the Holy See *specialissimo modo*, and the priest had

[23] Lega, "De Delictis et Pœnis," n. 125.

[23a] Concerning recourse to the bishop, cfr. App. III, 85.

no faculties to absolve from them outside the case of danger of death, the penitent after recovery must submit himself to the competent authority not to obtain absolution (for that he has received), but to make satisfaction for his offense to the ecclesiastical authority. If he neglects to have recourse, he again incurs the censure from which he was absolved in danger of death. The manner of having recourse is specified in Canon 2254. If a person in danger of death has been absolved from censures other than those mentioned in Canon 2252, he has no obligation of submitting his case again after recovery.

Absolution from Censures Outside the Danger of Death

2094. Even outside the danger of death, absolution may be given:

(1) from a non-reserved censure by any confessor in the sacramental forum; outside the sacramental forum by those persons who have jurisdiction over the offender in the external forum;

(2) from a censure *ab homine* by the person to whom the censure is reserved in accordance with Canon 2245, § 2. He can grant the absolution even though the offender has transferred his domicile or quasi-domicile to another place (i.e., outside the territory of the superior who inflicted the censure *ab homine*);

(3) from a censure reserved *a jure* by the person who ordained the censure, or him to whom it is reserved, and their successors or competent superiors, or their delegates. Wherefore, every Ordinary can absolve his subjects from a censure *reservata Episcopo* or *Ordinario* (*reserved to the bishop* or *to the Ordinary*), and a local Ordinary can absolve even strangers; absolution from a censure *reserved to the Apostolic See* may be received from the same Holy See and from others who have obtained faculty from the Holy See to absolve. For cases reserved *simpliciter,* the general faculty to absolve from papal reserved cases suffices; for cases reserved *speciali modo,* a special faculty is needed; for cases reserved *specialissimo modo* a most special faculty is required, subject in all three instances to the regulations of Canon 2254 for urgent cases (**Canon 2253**).

From non-reserved censures *a jure,* the confessors can absolve

in sacramental confession; outside sacramental confession those persons only can grant absolution who have jurisdiction over the offender in the external forum. Ordinarily confessors and pastors have no jurisdiction in the external forum, but they may be delegated by the Ordinary. Eichmann asserts that the pastors have jurisdiction in the external forum over their parishioners, and can absolve them in the external forum,[24] but that opinion is not endorsed by the majority of the commentators on the Code.[25] In occult cases the Ordinaries have faculties, in virtue of Canon 2237, to absolve from the censures reserved to the Holy See *simpliciter*.

Absolution from Censures in Urgent Cases

2095. In urgent cases—that is to say, in cases in which the censures *latæ sententiæ* cannot be observed exteriorly without danger of grave scandal or infamy, or if it is hard for the penitent to remain in the state of mortal sin for the time necessary to obtain absolution from the competent superior—every confessor can in the sacramental forum absolve from the censures, no matter how they are reserved. He must, however, impose on the penitent the burden to take recourse within one month under the penalty of relapse into the censure. The recourse is to be made at least by letter and through the confessor, if it can be done without grave inconvenience, without mentioning the name of the penitent, and directed to the Sacred Penitentiary or to the bishop or other superior who has the faculty to release from the censure, and the penitent is obliged to obey the orders of the superior (**Canon 2254,** § 1).

Even after he has received absolution (from a non-privileged confessor) as stated above, and has had recourse to the superior, the penitent is not forbidden to approach another confessor who has the faculty to absolve, and, confessing again at least the sin to which the censure is attached, to receive absolution. When he has received absolution, he shall accept the injunctions of the confessor, and shall not afterwards be obliged to

[24] *Strafrecht*, 87.

[25] Augustine, "Commentary," VIII, 155; Haring, "Grundzüge des kath. Kirchenrechts," 310, 939; Pöschl, "Kurzgefasstes Lehrbuch des kath. Kirchenrechts," 19.

accept other injunctions given by the superior to whom he had taken recourse by letter (**Canon 2254,** § 2).

If in some extraordinary case the recourse is morally impossible, the confessor himself can grant absolution without the obligation of recourse, except in the case of absolving his own accomplice in a sin of impurity (cfr. Canon 2367). The confessor shall enjoin on the penitent what the law requires in the respective case (e.g., restitution, safeguards against relapse, etc.), and impose an appropriate penance and satisfaction for the censure under condition that the penitent shall relapse into the censure if he does not within an appropriate space of time to be determined by the confessor do penance and make satisfaction (**Canon 2254,** § 3).

2096. The recourse to the Sacred Penitentiary, or to another ecclesiastical superior who has faculties to absolve from the censures reserved to the Holy See, is to be made ordinarily through the confessor writing in the name of the penitent. If the confessor cannot write for the penitent (e.g., because he will have no opportunity of seeing the penitent again), and the penitent himself can write, the latter is not excused from the recourse. If a penitent has been absolved from a censure reserved to the Holy See and the confessor has written for the penitent, the latter may nevertheless approach another confessor who has a special faculty to absolve from the censure, and who can impose the *mandata* (or special injunctions) regarding the things that the penitent is to do or avoid. The case is thereby closed, and, when later on the answer to the first confessor's letter comes, the penitent is not obliged to accept the *mandata* of the Sacred Penitentiary or the bishop.

If the recourse is morally impossible (e.g., because the confessor cannot write for the penitent and the penitent himself cannot write), and if it is very difficult for the penitent to confess again his offense to a superior or a confessor who has faculty to absolve from the censure, any confessor can absolve him and impose the *mandata,* penance and satisfaction, under pain of relapse into the censure, if the penitent has not complied with the orders of the confessor within the time specified. What constitutes a moral impossibility to make the recourse, must be judged by the confessor, who alone knows the circumstances of the individual case.

2097. The faculty of every confessor to grant absolution in urgent cases extends to all censures *latæ sententiæ* reserved by law (*quoquo modo reservatæ*): it is immaterial whether they are reserved by the common or by particular law, and whether they are reserved to the Holy See *simpliciter, speciali* or *specialissimo modo,* or to the Ordinary. The censures *ab homine* are excluded from the faculties of Canon 2254.[26]

Chapter II

OF CENSURES IN PARTICULAR

2098. The censures are as follows: (1) excommunication, (2) interdict, (3) suspension. An excommunication can affect physical persons only; wherefore, if it is inflicted on a moral body, it is understood to affect those individuals who coöperated in the offense. Interdict and suspension can be inflicted also on a community as a moral person. Excommunication and interdict may be inflicted on lay persons as well as on clerics; suspension is inflicted on clerics only; an interdict may be inflicted not only on persons, but also on places. An excommunication is always a censure; interdict and suspension can be either censures or vindicative penalties, but in case of doubt they are presumed to be censures (**Canon 2255**).

The three censures are enumerated in the law of the Decretals,[27] and restated by the Code. That excommunication cannot be inflicted on all persons who constitute a legal body, but only on those individuals of that body who are personally guilty of the offense, is a rule taken from the law of the Decretals.[28] The coöperation which entails an ecclesiastical penalty must be gravely sinful (cfr. Canon 2218). If a legal body is punished with interdict or suspension, the innocent members of the body are not personally interdicted or suspended, but the acts of the body as an organization are affected; if, however, the penalty is expressly inflicted on both the legal body and the guilty individuals, the latter are also personally interdicted or

[26] Holy Office, June 23, 1886 (*Collectanea de P. F.*, II, n. 1658); Holy Office, June 16, 1897 (*Collectanea de P. F.*, II, n. 1971); Holy Office, August 19, 1891 and March 30, 1892 (*Collectanea de P. F.*, II, nn. 1764, 1788). Vermeersch-Creusen, "Epitome," III, n. 454; Augustine, "Commentary," VIII, 158–162.

[27] *Decretales Greg. IX*, c. 20, *De verborum significatione*, lib. V, tit. 40.

[28] *Liber Sextus*, c. 5, *De sententia excommunicationis*, lib. V, tit. 11.

suspended (cfr. Canons 2274 and 2285). A personal penalty is not inflicted without personal guilt.

2099. In the following Canons, (1) the term *divine offices* implies those functions of the power of orders which, by the institution of Christ or the Church, are ordained for divine cult, and can be performed by clerics only; (2) by the term of *legal ecclesiastical acts* are to be understood: holding the office of administrator of ecclesiastical goods, acting as judge, auditor, *relator* (proponent), *defensor vinculi,* promoter of justice (prosecutor) and promoter of the faith, notary and chancellor, *cursor* (messenger), *apparitor* (summoner), attorney and procurator in ecclesiastical cases; the office of sponsor in Baptism and Confirmation; voting in ecclesiastical elections, and the exercise of the right of patronage (**Canon 2256**).

ARTICLE I.—OF EXCOMMUNICATION

2100. Excommunication is a censure by which one is excluded from the communion of the faithful with the consequences enumerated in the following Canons, which consequences are inseparable. It is also called *anathema,* especially when inflicted with the solemnities described in the *Pontificale Romanum* (**Canon 2257**).[29]

Some excommunicated persons are *vitandi,* others *tolerati.* Nobody is a *vitandus,* unless (1) he is excommunicated by name by the Apostolic See, (2) the excommunication is publicly proclaimed, and (3) in the decree or sentence it is expressly stated that he must be avoided. The only case in which one becomes an *excommunicatus vitandus* by the very fact of committing the crime is stated in Canon 2343, § 1, n. 1 (**Canon 2258**).

Canon 2258 contains a notable change of the former law in reference to the *excommunicatus vitandus.* A Decree of the Sacred Congregation of the Inquisition, January 9, 1884, stated that persons punished with excommunication by name through a declaratory or condemnatory sentence of the Supreme Pontiff or of the bishop became *excommunicati vitandi.*[30] Under the law of the Code the three conditions enumerated in Canon 2258 are necessary to render an excommunicated person a *vitandus.*

2101. Every excommunicated person is deprived of the right

[29] Lega, "De Delictis et Pœnis," n. 153 sqq.
[30] Lega, *op. cit.,* n. 156.

to assist at the divine offices, but not at the preaching of the word of God. If an *excommunicatus toleratus* assists *passively,* it is not necessary to expel him; a *vitandus* should be expelled, or, if he cannot be expelled, the divine service must be stopped, provided it can be done without grave inconvenience. From *active* assistance, which entails some participation in celebrating the divine offices (services), not only an *excommunicatus vitandus* is to be barred, but also every excommunicated person whose excommunication was inflicted by a declaratory or condemnatory sentence, or whose excommunication is otherwise notorious (**Canon 2259**). The sentence here spoken of makes the excommunication notorious by notoriety of law; the public knowledge of the excommunication makes it notorious by notoriety of fact (cfr. Canon 2197).

Excommunication and Reception or Administration of Sacraments and Sacramentals

2102. An excommunicated person may not receive the Sacraments; after a declaratory or condemnatory sentence he may not receive even the sacramentals (**Canon 2260,** § 1).

With regard to the ecclesiastical burial of excommunicated persons, the precepts of Canon 1240 (cfr. above, n. 1268) are to be observed (**Canon 2260,** § 2).

2103. An excommunicated person may not licitly consecrate or administer the Sacraments except in the following cases (**Canon 2261,** § 1).

Without prejudice to the rule of § 3 of this Canon, the faithful may for any just reason ask the Sacraments and sacramentals from an excommunicated person especially if there is no other minister available, and the excommunicated person at their request may minister to them without any obligation to inquire into the reason for the request (**Canon 2261,** § 2).

From a minister who is an *excommunicatus vitandus,* or who has been excommunicated by a declaratory or condemnatory sentence, the faithful may ask for sacramental absolution in accordance with Canons 882 and 2252 only in danger of death. Even in the case of danger of death, it is forbidden to approach such a minister for the other Sacraments and sacramentals, unless no other minister is available (**Canon 2261,** § 3).

This concession to the faithful does not entitle the minister to disregard the penalties of the excommunication which he has incurred except in those instances in which the faithful request him to administer the Sacraments to them. Sole [31] and other commentators maintain that an *implied* petition of the faithful for the Sacraments also entitles the minister whose excommunication is occult to say Mass (e.g., on Sunday at the hours when the people expect Mass to be said) and administer the Sacraments. There is no need of bringing this case under Canon 2261, § 2, for Canon 2232 rules that a person under secret censure need not betray himself by abstaining from acts forbidden by excommunication under circumstances which endanger his reputation. Canon 2261, § 2, permits the faithful to ask the Sacraments from an excommunicated minister, though his excommunication is publicly known, but they may not request him, except in danger of death, if the minister is an *excommunicatus vitandus,* or if excommunication has been imposed on him by a declaratory or condemnatory sentence.

Deprivation of Other Spiritual Favors

2104. An excommunicated person does not share in the indulgences, suffrages, or public prayers of the Church (**Canon 2262,** § 1).

It is, however, not forbidden: (1) that the faithful pray for an excommunicated person privately; (2) that the priests apply Mass for him privately, provided scandal is avoided; but, if he is a *vitandus,* Mass may be applied for his conversion only (**Canon 2262**). Canon 809 (cfr. Volume I, n. 711) discusses the question of application of Mass for excommunicated persons.

Deprivation of Right to Exercise Legal Ecclesiastical Acts, Offices and Functions, Jurisdiction

2105. An excommunicated person is forbidden to exercise legal ecclesiastical acts (cfr. Canon 2256) within the limits defined in law. He cannot be plaintiff in ecclesiastical trials except in so far as Canon 1654 permits, and he is forbidden to

[31] Sole, "De Delictis et Pœnis," n. 220.

discharge ecclesiastical offices and duties and to enjoy the privileges previously granted to him by the Church (**Canon 2263**).

Acts of jurisdiction of both the internal and external forum by an excommunicated person are illicit, and, if a condemnatory or declaratory sentence of excommunication has been issued against him, his acts of jurisdiction are invalid, without prejudice to the rule of Canon 2261, § 2 (**Canon 2264**).

Deprivation of Right of Appointment to Ecclesiastical Dignities, Offices, Benefices, Ordination

2106. Every excommunicated person whatsoever:

(1) is forbidden to make use of the right of election, presentation, or nomination;

(2) is incapable of acquiring dignities, offices, benefices, ecclesiastical pensions or any position in the Church;

(3) cannot be promoted to orders (**Canon 2265,** § 1).

Acts exercised in violation of the prohibitions in nn. 1–2 are not invalid, unless they were done by an *excommunicatus vitandus* or by a person excommunicated by a declaratory or condemnatory sentence. Once such a sentence has been issued, the person condemned cannot validly obtain any papal favor, unless mention is made of the excommunication in the papal rescript (**Canon 2265,** § 2).

2107. After a condemnatory or declaratory sentence the excommunicated person remains deprived of the income or revenue of any dignity, office, benefice, pension, or position which he might have in the Church; an *excommunicatus vitandus* forfeits the dignity, office, benefice, pension, or position itself (**Canon 2266**).

Forbidden Civil Communication with an Excommunicatus Vitandus

2108. All the faithful, except a husband (or wife), parents, children, servants and subjects, are bound to avoid communication in profane affairs with an *excommunicatus vitandus,* unless a reasonable cause justifies communication (**Canon 2267**).

Before the Constitution "Apostolicæ Sedis" of Pope Pius IX (1869), communication with an *excommunicatus vitandus* entailed an *ipso facto* excommunication (called *excommunicatio*

minor). The Sacred Congregation of the Inquisition, December 5, 1883, declared that the *excommunicatio minor* had been abolished by the said constitution, but it further declared, August 2, 1893, that, though the minor excommunication had been abolished, the prohibition remained to communicate without a legitimate excuse with an *excommunicatus vitandus*.[32]

ARTICLE II.—OF THE INTERDICT

2109. An interdict is a censure by which the faithful are not denied communion with the Church, but are deprived of certain spiritual goods (or rights) enumerated in the succeeding Canons. The prohibition is made either directly by a personal interdict, which forbids to the persons themselves the use of the spiritual goods, or indirectly by a local interdict, by which the dispensation or reception of such goods is forbidden in certain places (**Canon 2268**).

What Authorities Can Issue Interdict

2110. A general local interdict on the territory of a diocese or a state and a general personal interdict on the people of a diocese or state can be inflicted by the Apostolic See alone, or by its mandate. A general interdict on a parish or the people of a parish, and a particular interdict, both local and personal, can be decreed also by the bishop. A personal interdict follows the interdicted persons into any place; a local interdict has no force outside the interdicted territory, but in the interdicted territory all persons, including strangers and exempt, unless they have a special privilege, are obliged to observe the interdict (**Canon 2269**).

Consequences of Local Interdict

2111. A local interdict, either general or particular, does not forbid the administration of the Sacraments and sacramentals to dying persons, provided the rules of law are observed (cfr. Canon 2271, n. 2) as to administration of the Sacraments and the holding of other functions without pomp and solemnity, but it is forbidden to hold any divine offices or sacred rites in the inter-

[32] Lega, "De Delictis et Pœnis," nn. 155–156.

dicted territory, with the exception of the concessions granted in § 2 of this Canon and in Canons 2271–2272 (**Canon 2270,** § 1).

On the feasts of Christmas, Easter, Pentecost, Corpus Christi and the Assumption of the Blessed Virgin Mary, a local interdict is suspended, and only the conferring of Orders and the solemn nuptial blessing are forbidden (**Canon 2270,** § 2).

2112. If there is a general local interdict, and the decree imposing the interdict does not explicitly state otherwise, the following concessions are granted:

(1) provided they are not personally interdicted, clerics are allowed to conduct the divine offices and sacred functions in private in any church or oratory under the condition that the doors are locked, the services are conducted in a low tone of voice, and the church bells are silent;

(2) in the cathedral church, in parochial churches, and in a church which is the only one in a town, and in these churches exclusively, it is permitted to celebrate one Mass, to reserve the Blessed Sacrament, to administer Baptism, the Holy Eucharist and Penance, to witness marriages without the nuptial blessing, and to hold funeral services, but every kind of solemnity is forbidden; furthermore, it is permitted to bless baptismal water and holy oils, and preach the word of God. In connexion with these sacred functions, however, singing and all pomp in sacred vestments and other sacred furnishings are forbidden, also the ringing of church bells and the playing of the organ and other musical instruments. The Holy Viaticum is to be brought to the sick privately (**Canon 2271**).

Canon 2271, n. 1, orders the services to be conducted *januis clausis* (with the doors locked); as this clause is not repeated in n. 2, all the faithful may be admitted to the services, except those who are personally interdicted or who have committed or participated in the offense for which the local interdict was inflicted: the latter may be allowed to assist only at sermons (cfr. Canons 2275–2276). Concessions similar to those of Canon 2271 had been made by Pope Gregory IX [33] and by Pope Boniface VIII.[34]

[33] *Decretales Greg. IX,* c. 57, *De sententia excommunicationis,* lib. V, tit. 39.

[34] *Decretales Greg. IX,* c. 25, *De privilegiis,* lib. V, tit. 33.

Consequences of Local Particular Interdict

2113. If an altar or a chapel of a church has been placed under an interdict by a local particular interdict, no sacred office or rite may be celebrated at that altar or in that chapel (**Canon 2272,** § 1).

If a cemetery has been interdicted, the bodies of the faithful may be buried there, but without any ecclesiastical rites (**Canon 2272,** § 2).

If an interdict has been placed on a certain church or oratory, the following rules obtain: (1) if it is a capitular church and the chapter is not interdicted, the rule of Canon 2271, n. 1, applies, unless the decree which imposes the interdict commands that the Conventual Mass be celebrated and the Canonical Hours recited in another church or oratory; (2) if it is a parish church, the rule of Canon 2271, n. 2, applies, unless the decree which imposes the interdict substitutes another church during the time of the interdict (**Canon 2272,** § 3).

Extent of General and Particular Local Interdicts

2114. If a city is interdicted, all the *accessory places* (even though exempt, and including the cathedral church, if there be one) are included under the interdict. If a church is interdicted, the adjoining chapels are also interdicted, but not an adjoining cemetery. If a chapel is interdicted, the whole church of which the chapel is a part is not interdicted; if the cemetery adjoining the church is interdicted, the church is not interdicted, but all oratories in the cemetery are interdicted (**Canon 2273**).

What are the *accessory places* when an interdict is placed on a city? Pope Boniface VIII declared that by accessory places are to be understood the suburbs and adjacent buildings in order that the sentence of the interdict may not be despised by the holding of divine services in such places.[35] Cardinal Lega argues from the law of the Decretals that the bishop who pronounces an interdict on a place of his diocese, can simultaneously place under interdict also the places of another diocese adjoining the town or city which he has interdicted, and that

[35] *Liber Sextus,* c. 17, *De sententia excommunicationis,* lib. V, tit. 11.

he has the right to specify the adjoining places of the other diocese which are to be under the interdict.[36] Augustine denies that the law of the Decretals extends the interdict to adjoining places, if they belong to another diocese;[37] Sole endorses the opinion of Lega.[38]

Interdict on a Community or College

2115. If a community or college has committed an offense, an interdict may be issued either against all guilty individuals, or against the community as such, or against the guilty persons and the community (**Canon 2274,** § 1).

In the first case, the precepts of Canon 2275 apply (**Canon 2274,** § 2).

In the second case, the community or college cannot exercise any spiritual rights which it possesses as a community (**Canon 2274,** § 3).

In the third case, the interdict has the combined consequences of a particular and a general personal interdict (**Canon 2274,** § 4).

2116. (1) Personally interdicted individuals cannot celebrate divine offices or assist at them, except at the preaching of the word of God. If they assist passively, they need not be expelled; but from all active assistance which entails any participation in the celebration of the divine offices shall be excluded those persons who have been interdicted by a condemnatory or declaratory sentence, or whose interdict is otherwise notorious.

(2) Personally indicted individuals are forbidden to administer, effect (e.g., by saying Mass), or receive the Sacraments and sacramentals, in accordance with Canons 2260, § 1, and 2261;

(3) they are also subject to the deprivations of Canon 2265;

(4) they are deprived of ecclesiastical burial in accordance with Canon 1240, § 1, n. 2 (**Canon 2275**).

A community or legal body may be punished as a corporation for offenses imputable to the corporate body by depriving

[36] *De Delictis et Pœnis,* n. 169.
[37] *Commentary,* VIII, 208.
[38] *De Delictis et Pœnis,* n. 242.

it of the use of the rights and privileges which it possesses in its corporate capacity. Both the civil and the ecclesiastical law recognize the right of the authorities to punish thus a corporate body. The common welfare demands that offending corporations be punished and checked in their violations of the law. The innocent members suffer to some extent, in so far as their rights as members of the corporate body are concerned, but the law demands that sacrifice from them for the sake of the common weal. Canon 2276 provides protection for their rights as individuals.

When a community or legal body is punished with an interdict, one must weigh carefully the law or the decree which inflicts the penalty, for it may, as Canon 2274 states, be inflicted either on the guilty individuals of that body only, or on the legal body as such without special reference to the guilty members, or on both the guilty members and the body as such. The guilty members who caused the interdict to be inflicted on a legal body incur automatically a personal interdict and are liable to the deprivations of Canon 2275 (cfr. Canon 2338, § 4). Concerning the deprivation of ecclesiastical burial of personally interdicted individuals, Canon 1240, § 1, n. 2, rules that the penalty does not take effect unless the interdict is inflicted by a declaratory or condemnatory sentence.

Innocent Individuals in Local Interdict and in Interdict on a Legal Body

2117. Persons who are under a local interdict or an interdict against a community or college, but have not been the cause of the interdict, and are not forbidden by any other censure, may, if they are properly disposed, receive the Sacraments in accordance with the preceding Canons, without absolution from the interdict and without any other satisfaction (**Canon 2276**).

The very nature of ecclesiastical penalties (cfr. Canon 2215) proves that they are inflicted only on offenders against the law for the purpose of correcting them and vindicating ecclesiastical discipline. Now, in a local interdict and in an interdict against a community or college, there may be persons in the place or in the community or college who have not participated in the offense for which the place or the body of men was punished

with an interdict. Wherefore, the Code does not subject them to the deprivations entailed in the interdicts, in so far as their own persons are concerned. The Code says that they are free to receive the Sacraments *in accordance with the preceding Canons,* because they may not receive the Sacraments in a church which has been closed by the interdict, but they may go to another where services are allowed (cfr. Canons 2270–2272); persons who have been the cause of a local interdict, or of an interdict on a community or college, are in virtue of Canon 2338, § 4, placed *ipso facto* under a personal interdict, and, therefore, cannot receive the Sacraments even outside the interdicted place or territory, for a personal interdict follows the person everywhere (cfr. Canon 2269, § 2).

2118. Canonists have discussed the question whether an interdict on a place or a body of men should be considered a censure, or merely as a vindicative penalty. Canon 2268, however, says that it is a censure both as a personal and a local interdict, affecting the persons directly in the one case, and indirectly in the other. Interdict and suspension may, however, be inflicted in the manner of a vindicative penalty, but, when the law or the wording of the decree which inflicts the penalty leaves it doubtful whether they are censures or vindicative penalties, they are by law presumed to be censures (cfr. Canon 2255, § 2).[39]

Interdict "Ab Ingressu Ecclesiæ"

2119. The interdict "ab ingressu ecclesiæ" entails the prohibition to celebrate divine offices in church, to assist at them, and to receive ecclesiastical burial. If the person so interdicted nevertheless assists, he need not be expelled, and, if he is buried (in consecrated ground), the body need not be removed (**Canon 2277**).

This interdict "from entering a church" is in the nature of a personal particular interdict. Regarding this interdict, the law of the Decretals ruled that a person who violates it by partaking in the divine services, or continues in his office as before the interdict, becomes irregular.[40] Sole maintains that a person who is under this interdict is permitted to receive the Sacra-

[39] Lega, "De Delictis et Pœnis," n. 170.
[40] *Liber Sextus,* c. 20, *De sent. excom.,* lib. V, tit. 11.

ments in a church.[41] However, the prohibition to celebrate the divine offices and to assist at them seems to extend to both the administration and the reception of the Sacraments according to the definition of the terms "divine offices" given in Canon 2256. The interdict "from entering a church" does not forbid the person who is under that penalty to enter a church and pray there privately outside of divine services, nor does it forbid him to assist either actively or passively at divine services in a public, semi-public, or private oratory, for in the matter of penalties the term "church" is to be understood of those places of divine worship which are called churches in Canon 1161.

ARTICLE III.—OF SUSPENSION

2120. Suspension is a censure by which a cleric is forbidden to exercise the rights of his office or benefice or both. The effects of a suspension are not inseparable, but, unless the contrary is certain, all the consequences enumerated in the succeeding Canons follow from a suspension inflicted generally (i.e., without qualifications or limitations). On the contrary, from a suspension from office or from benefice the consequences of either species only follow (**Canon 2278**).

Suspension is a penalty which can be visited on the clergy only (cfr. Canon 2255, § 2). It does not deprive the cleric of his office, or his benefice, or other rights of the clergy, but it forbids the use and enjoyment of these rights, and differs therefore from deposition and degradation.

Various Species of Suspensions

2121. Suspension from *office* simply, without the addition of any limitation, forbids every act of the power of orders and jurisdiction, even the mere administration to which one is entitled by one's office with the exception of the administration of the goods of one's own benefice (**Canon 2279**, § 1).

(1) Suspension *a jurisdictione,* in general, forbids every act of the power of jurisdiction, both ordinary and delegated, in either the internal or the external forum.

(2) Suspension *a divinis* forbids the exercise of every act

[41] "De Delictis et Pœnis," n. 247.

of the power of orders which one obtained either by sacred orders or by privilege.

(3) Suspension *ab ordinibus* forbids every act of the power of orders received by ordination.

(4) Suspension *a sacris ordinibus* forbids every act of the power of orders received by ordination to major orders.

(5) Suspension *a certo et definito ordine exercendo* forbids the exercise of every act of the order designated in the suspension; besides, the suspended person is forbidden to confer that order and to receive a higher order and, if he has received it, to exercise that order.

(6) Suspension *a certo et definito ordine conferendo* forbids the conferring of that order, but not of an inferior or superior order.

(7) Suspension *a certo et definito ministerio* (e.g., the hearing of confessions), or from a certain and specified *office* (e.g., the care of souls), forbids every act of the ministry or office specified in the suspension.

(8) Suspension *ab ordine pontificali* forbids every act of the powers of episcopal orders.

(9) Suspension *a pontificalibus* forbids the exercise of the episcopal acts, as specified in Canon 337 (**Canon 2279,** § 2).

2122. Suspension from a benefice deprives the holder of the benefice of the fruits or income of the benefice, except the right of residing in the house or residence pertaining to the benefice, but it does not deprive him of the right to administer the goods of the benefice, unless the decree or sentence by which the suspension is inflicted explicitly takes away the administration from the suspended cleric and gives it to another. If, notwithstanding the censure, the beneficiary takes the income, he is bound to make restitution, and he can be forced to do so even by means of canonical penalties, if necessary (**Canon 2280**).

If a pastor is suspended from a benefice, he forfeits from the moment that the suspension becomes effective the income from his benefice. In the United States many dioceses give to the pastor, besides a salary of a fixed amount of money (to be drawn from the treasury of the parish), an allowance for his board. In these dioceses the statutes usually ordain that the stole fees (i.e., offerings of the people at Baptism, Marriage, and funerals) become the property of the parish. It seems that,

in a suspension from a benefice, the pastor forfeits both his salary and board allowance for the duration of the suspension, for both the salary and board allowance are in that case the income or revenue of the benefice. The Mass stipends (at least the so-called *stipendia manualia*) are not part of the benefice, but personal offerings made to him who says the Mass. With the concession of residence in the house of the benefice are very likely included light, water, and heating, without which the house would not be a convenient dwelling-place. All the income of the benefice which has been illegally appropriated by the suspended pastor must in justice be returned to the parish, even before orders to that effect are issued by the bishop, and, if the pastor neglects to make the restitution, he can be forced by canonical penalties to satisfy this obligation.

The suspension from office of a pastor or an assistant priest does not deprive them of the salary or revenue, but the bishop undoubtedly can deprive them of it, because the salary is given in consideration of the office, and, when they cannot perform the duties of their office through their own fault, they cannot complain if they are deprived of the salary.

2123. A general suspension, or a suspension from office or from benefice, affects all offices or benefices which a cleric holds in the diocese of the superior who suspends him, unless the contrary is apparent (**Canon 2281**).

The general suspension deprives a person of the exercise of both office and benefice, and of the use of the powers of orders as well as of jurisdiction. The local Ordinary can, of course, deprive his clerical subjects only of the right to exercise offices and benefices which they hold in his diocese, not of those which perhaps they hold in another diocese. It is difficult to harmonize Canon 2281 with Canon 2279, § 1: the latter Canon gives the rule that a suspension from office without addition of a limitation forbids every act of the powers of orders and jurisdiction, and therefore a cleric cannot licitly exercise any ecclesiastical office; on the other hand, Canon 2281 states that by a general suspension, or by a suspension from office or from benefice issued by the local Ordinary, only the offices and benefices which one holds in the diocese of the suspending Ordinary are affected. A personal penalty affects the guilty individual everywhere, but Canon 2226, § 4, admits of an exception to this gen-

eral principle saying, "nisi aliud expresse caveatur." It seems that Canon 2281 explicitly modifies the general principle in the case of suspension of a cleric who holds an office or benefice in another diocese, for the following Canon repeats that the Ordinary of one diocese cannot suspend a cleric from an office or a benefice which such cleric holds in another diocese.

A local Ordinary cannot suspend a cleric from a specified office or benefice that is located in a strange diocese, but the suspension *latæ sententiæ,* inflicted by the common law, affects all offices or benefices in whatever diocese they may be held by a cleric (**Canon 2282**).

2124. What is said concerning excommunication in Canon 2265 is to be applied also to suspension (**Canon 2283**).

Commentators disagree as to what suspension is declared in Canon 2283 to entail all the penalties of Canon 2265. It is reasonable to interpret the term suspension in the sense of a general suspension; such a suspension alone forbids the exercise of orders and jurisdiction, of office and benefice, and, having thus all the combined effects of the various partial suspensions, is for that reason the most severe kind of suspension. Canon 2283 cannot mean to say that the deprivations of Canon 2265 follow the partial suspensions, for the consequences of the partial suspensions are individually enumerated in Canons 2279–2281, which would be quite superfluous, if the partial suspensions entailed the same deprivations of Canon 2265.[42]

2125. When one has incurred a censure of suspension which forbids the administration of the Sacraments and sacramentals, the precepts of Canon 2261 apply; when a censure of suspension has been incurred which forbids an act of jurisdiction either in the internal or the external forum (e.g., sacramental absolution), the act is invalid, if a condemnatory or declaratory sentence has been issued, or if the superior has explicitly declared that he revokes the jurisdiction itself; otherwise it is merely illicit, unless performed at the request of the faithful in accordance with Canon 2261, § 2 (**Canon 2284**).

A suspension which forbids the administration of the Sacraments and sacramentals (e.g., a general suspension or a suspension *ab officio, a divinis, ab ordinibus*) has the consequences of Canon 2261. If a suspension forbids an act of jurisdiction

[42] Augustine, "Commentary," VIII, 229–241.

(e.g., a general suspension, a suspension *ab officio, a jurisdictione*), the acts of jurisdiction forbidden to the suspended cleric may be either invalid or illicit in accordance with the rule of Canon 2284. If the exercise of jurisdiction is not invalidated by the suspension, its exercise becomes licit under the circumstances specified in Canon 2261, § 2.

The reception of the Sacraments is not forbidden to the cleric who has incurred a general or a partial suspension, provided he is truly contrite for the offense for which he has been punished with suspension, even though the censure or penalty is reserved so that the confessor cannot absolve him from the suspension. Canon 2250 states that, when there is question of a censure which does not forbid the reception of the Sacraments, the person can be absolved from the sin, though the censure remains.

Suspension of a Community or College

2126. If a community or college of clerics has committed an offense, suspension may be inflicted either on the guilty individuals, or on the community as such, or on both the guilty individuals and the community. If it is inflicted on the guilty individuals, the precepts of this Article (Canons 2278 sqq.) shall apply; if the community as such is punished with suspension, the community is forbidden the exercise of the spiritual rights which pertain to it as a community; if both the guilty individuals and the community as such are suspended, the suspension has both the effects just specified (**Canon 2285**).

Excommunication may be inflicted on physical persons only, not on a moral person or body of men (cfr. Canon 2255, § 2); on the other hand, an interdict and suspension may be incurred by a community or body of men. As to the consequences of a suspension pronounced against or incurred by a community or college, and especially with reference to the innocent members of such body, cfr. above on Canons 2274, 2276.

TITLE IX

OF VINDICATIVE PENALTIES

2127. Vindicative penalties are those which tend directly towards the expiation of an offense, so that their remission does not depend on the cessation of the contumacy of the offender (**Canon 2286**).

The censures are medicinal or corrective penalties, which must be pardoned by the competent authority when the offender with proper disposition asks for absolution, because these penalties have then attained their purpose—the amendment of the offender. Vindicative (or punitive) penalties are, as the very name suggests, intended primarily for the expiation of the violation of law and order, and only secondarily for the correction or amendment of the offender. Vindicative penalties are, as a rule, inflicted for a definite length of time (e.g., suspension from orders, jurisdiction, etc., for one year, a suspension or other penalty *ad beneplacitum nostrum,* i.e., for so long as the superior who inflicts the penalty wants it to remain); a perpetual penalty is likewise a vindicative penalty, not a censure.

2128. From vindicative penalties which have been inflicted the offender has the right of appeal or recourse *in suspensivo,* unless the contrary is explicitly stated in law (**Canon 2287**).

The appeal or recourse *in suspensivo* holds the penalty in abeyance, and leaves it to the higher superior to impose the penalty, or to remit it, or to modify it. The right of appeal has reference to vindicative penalties imposed by sentence of the ecclesiastical court; the right of recourse has reference to the vindicative penalties imposed by particular decree or precept of the ecclesiastical superior. From vindicative penalties *latæ sententiæ* inflicted by either the common or the particular law there is no appeal or recourse, because they take effect immediately on the violation of the law to which such a penalty is attached. It may be noted that the Code allows appeal or recourse *in suspensivo* against a sentence, decree, or precept, which inflicts a vindicative penalty, while it does not permit such appeal or recourse against a sentence, decree or precept imposing a censure (cfr. Canon 2243).

2129. Except in cases of penalties of degradation, deposi-

tion, and deprivation of office or benefice, and unless there is urgent reason for repairing a scandal, it is left to the discretion of the judge to suspend the execution of an ordinary penalty inflicted by a condemnatory sentence, if the offender after a laudable life has failed for the first time; but he may suspend the execution of the sentence only under condition that, if the guilty person within the next three years commits another offense either of the same or of a different kind, he shall be liable to the penalty of both offenses (**Canon 2288**).

Note that the Code grants power to the ecclesiastical judge to suspend the execution of a vindicative penalty inflicted by a *condemnatory* sentence. The condemnatory sentence supposes that the law or precept threatens the offender with a penalty, that the offender has actually violated the law, and that the ecclesiastical court has found him guilty and condemned him to the penalty (cfr. Canon 2223, §§ 1–3, on the powers of the judge in such cases). If the law itself imposes the penalty on the very violation of the law (*latæ sententiæ penalties*), the penalty is incurred automatically (cfr. Canon 2232), and Canon 2223, § 4, leaves it to the discretion of the ecclesiastical superior whether he wishes to issue the *declaratory* sentence, obliging him only in certain cases specified in this Canon to issue the sentence. Canon 2232 defines the effects of the declaratory sentence.

2130. The vindicative penalty ceases on its expiation or its dispensation granted by him who has, in accordance with Canon 2236, legitimate authority to dispense (**Canon 2289**). Canon 2236 rules that the dispensation from vindicative penalties can be granted by him who inflicted it, or by his competent superior or successor, or by a person to whom this faculty is committed by the aforesaid authorities.

2131. In more urgent occult cases, if by the observance of a vindicative penalty *latæ sententiæ* (cfr. Canon 2217, § 1, n. 2) the guilty person would betray himself with resulting infamy and scandal, any confessor may in the sacramental forum suspend the obligation of observing the penalty under the following conditions: the confessor shall enjoin on the offender the burden to have recourse to the Sacred Penitentiary, or to the bishop who has the faculty to dispense, if the recourse can be taken without grave inconvenience; the petition is to be made by letter

and through the confessor within at least one month; the name of the offender shall be concealed; the orders of the superior to whom recourse is made must be obeyed. If in some extraordinary case this recourse is impossible, the confessor himself can grant the dispensation in accordance with Canon 2254, § 3 (**Canon 2290**).

Canon 2232 states that a penalty *latæ sententiæ,* whether medicinal or vindicative, is incurred immediately on the transgression of the law, and obliges the culprit to observe the penalty in both the external and the internal forum; but, whenever the offender has incurred the penalty by a violation of the law that was not notorious, and he cannot submit to the penalty without defaming himself, he is not obliged to observe the penalty in the external forum until a declaratory sentence has been issued against him, or his offense has become notorious. Why does Canon 2290 rule that the confessor is to grant the suspension of the penalty? There is no doubt that the benefit of Canon 2232 can be enjoyed without the intervention of the confessor, but the submission of the case to the confessor gives the offender additional benefits not enjoyed under Canon 2232, for he is freed from the penalty for the time being to such an extent that he is excused from its observance, not only in the external but also in the internal forum, and can exercise the acts which would otherwise be forbidden to him by the penalty, not only in cases where the omission of these acts would betray his offense to the public, but also in other cases where there is no danger of betraying himself.[43]

Chapter I

OF COMMON VINDICATIVE PENALTIES

2132. The vindicative penalties which may according to the gravity of the offenses be inflicted on all the faithful (i.e., clerics and laymen), are chiefly the following:

(1) local interdict and interdict on a community or college imposed forever, or for a specified length of time, or *ad beneplacitum superioris* (as long as the superior wills);

[43] Vermeersch-Creusen, "Epitome," III, n. 491.

(2) interdict from entering a church imposed forever, or for a specified length of time, or *ad beneplacitum superioris;*

(3) penal transfer or suppression of a bishopric or a parish;

(4) infamy of law;

(5) deprivation of ecclesiastical burial, in accordance with the rule of Canon 1240, § 1;

(6) deprivation of the sacramentals;

(7) deprivation or temporary suspension (*ad tempus*) of a pension which is paid by the Church or from ecclesiastical goods, or deprivation of any other ecclesiastical right or privilege;

(8) prohibition to exercise legal ecclesiastical acts (cfr. Canon 2256, n. 2);

(9) disqualification to obtain ecclesiastical favors or positions in the Church which do not demand the clerical state, or to acquire academic degrees conferred by ecclesiastical authority;

(10) deprivation of or temporary suspension from a position, faculty or favor already obtained;

(11) deprivation of the right of precedence, of an active and passive vote, or of the right to use honorary titles, distinctive dress, or insignia which the Church has conceded;

(12) pecuniary fines (**Canon 2291**).

2133. The penal suppression or transfer of an episcopal see is reserved to the Roman Pontiff; the transfer of a parish cannot be decreed by the local Ordinaries except after consultation with the Chapter—or diocesan consultors (**Canon 2292**).

2134. Infamy is divided into infamy of law and infamy of fact. Infamy of law is that which is declared in the cases fixed by the common law. Infamy of fact is contracted when, through the commission of an offense or bad conduct, one has lost good repute with righteous and serious Catholics; the judgment as to whether infamy of fact exists in a given case is vested in the Ordinary. Neither infamy affects the blood-relations or relations by marriage of the offender, without prejudice to the law of Canon 2147, § 2, n. 3 (**Canon 2293**). The Canon referred to rules that an irremovable pastor may be deprived of his parish for keeping in his house servants or blood-relations of disreputable character, if he has thereby lost the respect of his parishioners.

2135. A person who has incurred infamy of law is not only irregular, as declared by Canon 984, n. 5, but in addition he is

incapacitated from obtaining ecclesiastical benefices, pensions, offices and dignities, from performing legal ecclesiastical acts, from discharging any ecclesiastical right or duty, and must be restrained from the exercise of sacred functions of the ministry (**Canon 2294,** § 1).

A person who has incurred infamy of fact must be restrained not only from the reception of orders (in accordance with Canon 987, n. 7), from dignities, benefices, and offices of the Church, but also from the exercise of the sacred ministry and from legal ecclesiastical acts (**Canon 2294,** § 2).

There is a great difference between the consequences of the infamy of law and the infamy of fact. If it is an infamy of law, the person who incurred this penalty cannot validly obtain ecclesiastical benefices, pensions, offices and dignities, nor can he validly exercise the rights connected with the same, nor perform a valid legal ecclesiastical act. If it is infamy of fact, the obtaining of ecclesiastical benefices, offices, etc., as well as their exercise, are illicit but valid. Because of the grave consequences of infamy of law, the Code rules that it can be decreed by the common law only, and the cases in which the law imposes the penalty of infamy of law are easily discernible, for the Code invariably uses the same term "infamia juris" (*infamis*). The Code imposes this penalty either in the form of a penalty *latæ sententiæ* (e.g., in Canon 2320: "est ipso facto infamis"), or as a penalty *ferendæ sententiæ* (e.g., in Canon 2314, § 1, n. 2: "infames declarentur"). The infamy of law *ferendæ sententiæ* does not entail the consequences of Canon 2294, § 1, until after the issuance of the condemnatory sentence, as is evident from the general principles of ecclesiastical penalties.

2136. Infamy of law ceases only on dispensation granted by the Apostolic See. Infamy of fact ceases when the Ordinary, after considering all the circumstances and especially the prolonged amendment of the guilty party, shall prudently judge that the person has regained good repute with righteous and serious Catholics (**Canon 2295**). The prolonged amendment (*diuturna emendatio*) very likely means laudable conduct for three years, as in the case spoken of in Canon 672.

2137. If there is question of acquiring things for which the common law ordains rules of capability, the penalty of disqualification can be inflicted by the Apostolic See alone. Rights

acquired previous to the incurring of a disqualification are not lost thereby, unless the penalty of deprivation is added to the penalty of disqualification (**Canon 2296**).

The exercise of acquired rights may be rendered invalid or illicit by incurring a disqualification (e.g., the infamy of law or of fact, cfr. Canon 2294), but the right itself is not taken away, unless the law or sentence explicitly states the additional penalty of deprivation of benefices, offices, etc. Consequently, when the penalty of disqualification ceases by expiation or by dispensation, the use and enjoyment of the former rights revive.

2138. Pecuniary fines inflicted by the common law without specifying the purpose for which these fines are to be applied, and pecuniary fines imposed or to be hereafter imposed by particular law, must be employed by the local Ordinaries for pious purposes, and may not be used for the benefit of the *mensa episcopalis* or *capitularis*—i.e., neither for the maintenance of the bishop's household nor for that of the Cathedral Chapter (**Canon 2297**).

Chapter II

OF VINDICATIVE PENALTIES SPECIAL TO THE CLERGY

2139. The vindicative penalties which are imposed on clerics exclusively are the following:

(1) prohibition to exercise the sacred ministry except in a certain church;

(2) suspension for ever, or for a definite length of time, or *ad beneplacitum Superioris;*

(3) penal transfer from an office or benefice to an inferior one;

(4) deprivation of some right connected with a benefice or office;

(5) disqualification for all or some dignities, offices, benefices and other functions proper to the clergy;

(6) penal deprivation of a benefice or office with or without a pension;

(7) prohibition to stay in a certain place or territory;

(8) precept to stay in a certain place or territory;

(9) temporary deprivation of the ecclesiastical garb;

(10) deposition;
(11) perpetual deprivation of the ecclesiastical garb;
(12) degradation (**Canon 2298**).

2140. If a cleric obtains an irremovable benefice, he cannot be deprived of it as a penalty except in the cases stated expressly in law; if he has a removable benefice, he can be deprived of it also for other reasonable causes. Clerics who hold benefices, offices, or dignities, may for a fixed space of time be prohibited from the exercise of some ministry connected with them (e.g., the ministry of preaching, hearing of confessions, etc.). A cleric cannot be deprived of the benefice or pension under the title of which he was ordained, unless other provision is made for his respectable maintenance, without prejudice to the precepts of Canons 2303–2304 (**Canon 2299**). The Canons referred to deal specifically with the provision for maintenance of a cleric who has been deposed. Canons 2147–2167 deal with the removal of irremovable and removable pastors.

2141. If a cleric gives grave scandal, and after being admonished, does not amend, and if the scandal cannot otherwise be stopped, he may meanwhile be deprived of the right to wear the ecclesiastical garb, which deprivation entails for the time of its duration the prohibition to exercise any ecclesiastical ministry and the deprivation of the clerical privileges (**Canon 2300**).

2142. The Ordinary may not command a cleric to stay in a certain place outside the territory of his diocese, unless the Ordinary of that place has consented, or unless there is question of sending a cleric to a house of penance or correction which is intended not only for the clerics of the particular diocese but also for outsiders, or unless there is question of an exempt religious house, and with the consent of its superior (**Canon 2301**).

Since the jurisdiction of each local Ordinary is confined to the limits of his diocese, he may not order a cleric to leave his diocese and stay in a certain place in the diocese or territory of another local Ordinary unless the latter consents, or has given a general consent by allowing the erection of a house destined for the reception of priests generally for the purpose of doing penance and amending their lives.

2143. The command or the prohibition to stay in some cer-

tain place, and confinement in a house of correction or in a religious house, especially for a protracted period, shall be imposed only in serious cases, where according to the conscientious judgment of the Ordinary these penances are necessary for the amendment of the cleric or the reparation of scandal (**Canon 2302**).

2144. Deposition, while leaving intact the obligations arising from orders and the clerical privileges, implies both suspension from office and disqualification to obtain or discharge any offices, dignities, benefices, pensions, or positions in the Church, and in addition deprivation of offices, benefices, etc., which the guilty cleric actually has, even though he was ordained under the title of such benefice, pension, etc. (**Canon 2303,** § 1).

If a cleric is by deposition deprived of a benefice or pension under the title of which he was ordained and the cleric is truly in need of aid after loss of such benefice or pension, the Ordinary shall charitably provide for him in the best possible manner lest he be forced to go begging and bring dishonor on the clerical state (**Canon 2303,** § 2).

The penalty of deposition may be inflicted only in the cases specified in law (**Canon 2303,** § 3).

2145. If a deposed cleric does not show any signs of amendment, and especially if he persists in giving scandal and does not heed advice, the Ordinary may deprive him for ever of the right to wear the ecclesiastical garb (**Canon 2304,** § 1).

This deprivation entails the deprivation of the clerical privileges and the cessation of the precept of Canon 2303, § 2—i.e., to provide charitable maintenance (**Canon 2304,** § 2).

2146. Degradation includes deposition, perpetual deprivation of the ecclesiastical garb, and reduction to the state of the laity. This penalty may be imposed only for an offense which is visited with degradation in law, or if the cleric has already been deposed and deprived of the ecclesiastical garb, and still continues for a year to give grave scandal. The degradation may be: (1) *verbal* or *by edict,* which is inflicted by a mere sentence, but has immediately all its juridical consequences without any execution; (2) *real,* if the solemnities prescribed by the Roman Pontifical are observed (**Canon 2305**).

The distinction between deposition and degradation is clearly defined in the foregoing Canons. Both penalties have this in

common, that they may be inflicted only for offenses punished with these penalties by the law of the Code. Before the promulgation of the Code, it was the common opinion of canonists that no authority inferior to the Holy See could decree deposition or degradation against an offending subject, except for offenses to which the common law of the Church attached these penalties, and the Code explicitly confirms that opinion.[44] The distinction between deposition and degradation was already stated in the law of the Decretals.[45] On trials for inflicting deposition, cfr. Canon 1576.

TITLE X

OF PENAL REMEDIES AND PENANCES

Chapter I

OF PENAL REMEDIES

2147. Penal remedies are: (1) admonition; (2) rebuke; (3) precept; (4) surveillance (**Canon 2306**).

The penal remedies are preventative measures to avert the lapse into grave offenses. The very fact that they are called penal remedies, supposes that the conduct of the individual to whom the remedies are to be applied is blameworthy.

2148. When a person stands in the proximate occasion of committing an offense, or when an investigation has created a grave suspicion that he has committed an offense, he shall be admonished by the Ordinary either in person or through another appointed for that purpose (**Canon 2307**).

2149. If scandal or grave disturbance of order arises from the conduct of a person, he is to be rebuked by the Ordinary either in person or through another, or even by letter, and the rebuke should be accommodated to the peculiar conditions of the person and the fact about which there is question (**Canon 2308**).

2150. The admonition as well as the rebuke may be either public or secret (**Canon 2309**, § 1).

[44] Sole, "De Delictis et Pœnis," n. 292; Ayrinhac, "Penal Legislation," nn. 168–175.

[45] *Decretales Greg. IX*, c. 27, *De verborum significatione*, lib. V, tit. 40.

Public admonition or rebuke is to be made either in the presence of a notary or two witnesses, or by letter in such a manner that there is documentary proof of the reception of the letter and of the contents of the same (**Canon 2309,** § 2).

Public rebuke may be administered only to an offender who has been convicted of, or has confessed the offense. It is called a judicial rebuke, if administered by a judge sitting in court or by the Ordinary before a criminal trial (**Canon 2309,** § 3)

Judicial rebuke either takes the place of the penalty, or is given to increase the penalty, especially when there is question of relapse (**Canon 2309,** § 4). On the rules governing judicial rebuke, cfr. Canons 1947–1953.

Even though admonition and rebuke are given secretly, some documentary evidence of their administration must be kept in the secret archives of the Curia (**Canon 2309,** § 5).

Both admonition and rebuke may be given once or repeatedly, at the discretion of the superior (**Canon 2309,** § 6).

2151. If the admonitions and rebukes have brought no results, or if no favorable results can be anticipated, the precept or command is to be given by which the individual is to be told in detail what he shall do or what he shall avoid, a penalty being threatened in case of transgression of the precept (**Canon 2310**).

2152. If the gravity of the case demands, and especially if the person in question stands in danger of relapse into the same offense, the Ordinary shall subject him to surveillance. Surveillance may be prescribed also for the purpose of increasing the penalty, especially in case of relapse (**Canon 2311**).

Chapter II

OF PENANCES

2153. Penances are imposed in the external forum to furnish the offenders with an opportunity of escaping the legal penalty of their offenses, or of obtaining absolution or dispensation from a penalty which they have already contracted. For an occult offense or transgression public penance is never imposed. Penances are to be imposed, not so much in proportion to the gravity of the offense, but rather in proportion to the contrition

of the offender, after the conditions of persons and the circumstances of the offenses have been taken into consideration (**Canon 2312**).

Canon 1947 rules that, if an offender is summoned to court and confesses his offense, the judge may administer rebuke and impose penances instead of the penalty of law, except in the cases enumerated in Canon 1948. Canon 1952 states that these penances should be more lenient than the penalty would have been, if the criminal trial had proceeded to a sentence. Penances are also imposed when a person, who has incurred a canonical penalty, truly repents and asks for absolution from a censure, or dispensation from a vindicative penalty.

2154. The principal penances are:

(1) the recital of specified prayers;

(2) pious pilgrimages or other works of piety;

(3) special fasts;

(4) almsgiving for pious purposes;

(5) retreat or spiritual exercises for some days in a pious or religious house;

The Ordinary may at his discretion impose penances, together with the penal admonition or rebuke (**Canon 2313**).

PART THREE

OF PENALTIES AGAINST INDIVIDUAL OFFENSES

TITLE XI

OF OFFENSES AGAINST THE FAITH AND UNITY OF THE CHURCH

2155. All apostates from the Christian faith and each and every heretic or schismatic incur the following penalties:

(1) *ipso facto* excommunication;

(2) if they have been admonished and do not repent, they shall be deprived of any benefice, dignity, pension, office or other position which they may hold in the Church; they shall be declared infamous, and, if they are clerics, they shall after renewed admonition be deposed;

(3) if they have joined a non-Catholic sect or have publicly adhered to it, they incur infamy *ipso facto,* and, if they are clerics and the admonition to repent has been fruitless, they shall be degraded. Canon 188, n. 4, provides, moreover, that the cleric who publicly abandons the Catholic faith loses every ecclesiastical office *ipso facto* and without any declaration (**Canon 2314,** § 1).

Absolution in the internal forum from the excommunication mentioned in the preceding paragraph is reserved in a special manner to the Apostolic See. If, however, the offense of apostasy, heresy or schism has in any way been brought to the external forum of the local Ordinary, even by voluntary confession, the Ordinary—but not the vicar-general, unless he has a special mandate—can absolve the repentant sinner in the external forum by his ordinary authority, after the juridical abjuration has been made, and the other conditions demanded in law have been fulfilled. When he has been thus absolved from the censure, the offender may then be absolved from the

sin in the internal forum by any confessor. The abjuration is made in juridical form, when it takes place in the presence of the local Ordinary or his delegate and at least two witnesses (**Canon 2314**, § 2).

2156. The definition of apostasy, heresy and schism is given in Canon 1325, § 2. As to heresy, it may be noted that formal heresy only is punished in Canon 2314; wherefore, as Cerato remarks,[46] persons who were born and educated in an heretical sect, and never knew the true Faith, cannot be said to have stubbornly denied or rejected the Catholic Faith, and thus do not incur the penalties of Canon 2314. Nevertheless, in the external forum, they are not free from the penalties of Canon 2314, for, in accordance with Canon 2200, when there is the external violation of a law of the Church, malice is presumed in the external forum until its absence has been proved. The Holy See has insisted that converts from heretical or schismatic sects shall not be received into the Church, until they have abjured heresy or schism and been absolved from the censure.[47] If children become converts before they have attained the age of puberty, they need no absolution from the excommunication (cfr. Canon 2230), and make—instead of the abjuration—simply the profession of faith.[48]

2157. The local Ordinaries are empowered by Canon 2314, § 2, to grant absolution from the excommunication under certain conditions laid down in the Canon. The Ordinary can delegate priests in his territory (even by a general delegation) to witness in the presence of two witnesses the juridical abjuration and to absolve in the external forum: any confessor may then hear the confessions of the heretics or schismatics, and absolve them. In the United States the bishops usually delegate the priests who receive converts into the Church to witness the abjuration and to absolve from the censure.

2158. Canonists discuss the question whether the local Ordinaries have the power to absolve from the other penalties which (besides the excommunication) are inflicted on heresy, apostasy and schism, by Canon 2314, § 1. If these offenses are public, the Ordinary cannot absolve from the infamy of law which is

[46] *Censuræ vigentes* (2nd ed.), n. 68.
[47] Instr. of Sacred Cong. of the Propaganda, July 20, 1859 (*Collect. de P. F.*, I, n. 1178).
[48] Holy Office, March 8, 1882 (*Collect. de P. F.*, II, n. 1566).

incurred by those who join a non-Catholic sect or publicly adhere to it (cfr. Canon 2237, § 1, n. 3). If the offenses are occult, the guilty persons do not incur *ipso facto* any penalty except the excommunication. The new faculties given by the Sacred Penitentiary to the local Ordinaries of the United States grant power to absolve from all censures and other ecclesiastical penalties incurred by heresy. The Ordinary may habitually delegate this faculty to the Canon Penitentiary and to vicars-forane (deans); for a certain length of time to be fixed at the Ordinary's discretion he may delegate this faculty to some other confessors, and, when the faculty is requested in individual cases, he may delegate any confessor.

Suspicion of Heresy

2159. A person who is suspected of heresy, and who after admonition has not removed the cause for suspicion, shall be forbidden to exercise legal ecclesiastical acts; if he is a cleric, and after repeated admonition has not removed the cause for suspicion, he shall be suspended *a divinis*. If a person suspected of heresy has been punished with the penalties here stated, and does not amend within six months after their imposition, he shall be considered as a heretic and be liable to the penalties for heresy (**Canon 2315**).

A person who of his own accord and knowingly helps in any manner to propagate heresy, or who communicates in sacred rites (*in divinis*) with heretics in violation of the prohibition of Canon 1258, incurs suspicion of heresy (**Canon 2316**).[48a]

2160. Under the Constitution "Apostolicæ Sedis" of Pope Pius IX, October 12, 1869, in which an official list of common law censures was promulgated, some of the offenses of Canons 2315–2316 were punished with the same penalties as the crime of heresy itself. The Code is more lenient, since it makes various acts of coöperation in heresy a distinct offense called "suspicion of heresy." Various Canons state the acts which constitute the offense of suspicion of heresy: Canons 2316 (coöperation in sacred rites with heretics, propagation of heresy), 2319 (agreement to educate one's children as non-Catholics, procuring their

[48a] Certain societies for reunion of Christians, theosophism, cfr. App. III, 87, a and b.

baptism or education outside the Catholic Faith), 2320 (sacrilegious abuse of the Holy Eucharist), 2332 (appeal from Decree of the Roman Pontiff to an Œcumenical Council), 2340 (stubborn perseverance in excommunication for one year), 2371 (reception of orders through simony, ordaining or administering other Sacraments through simony). Participation in heretical sacred rites and assistance given to non-Catholic denominations which may directly or indirectly help to advance the cause of their religion is discussed under Canon 1258 (cfr. n. 1284); the other cases of suspicion of heresy will be discussed under the respective Canons.

Defending Condemned Doctrines

2161. Persons who stubbornly teach or defend, either publicly or privately, a doctrine which has been condemned by the Apostolic See or by an Œcumenical Council, not however as formally heretical, shall be barred from the ministry of preaching the Word of God and of hearing sacramental confessions, and from every office of teaching, without prejudice to other penalties which the sentence of condemnation of the doctrine may perhaps have decreed, or the penalties which the Ordinary, after admonition, may judge necessary to impose for the reparation of the scandal (**Canon 2317**).

The Constitution "Apostolicæ Sedis" stated that, when the Apostolic See had condemned a proposition under penalty of *ipso facto* excommunication, it was reserved *simpliciter* to the Roman Pontiff. The Code punishes the teaching of condemned propositions with penalties *ferendæ sententiæ*. By the term "Apostolic See" is to be understood also the Holy Office or any other Sacred Congregation, Office, etc., of the Roman Curia, through which the Holy Father is accustomed to transact the affairs of the Universal Church (cfr. Canon 7). The Holy Office is particularly authorized by the Code (cfr. Canon 247) to watch over doctrines affecting faith and morals. Canon 2317 speaks of teaching or defending condemned doctrines which have not been pronounced as formally heretical, for, if a doctrine has been pronounced formal heresy, one becomes a heretic by teaching or defending that doctrine, and incurs the penalties which Canon 2314 inflicts on heresy. A very comprehensive list of propositions condemned by the Holy See is given in

Denziger's "Enchiridion Symbolorum et Definitionum de Rebus Fidei et Morum."

Penalties in Reference to Forbidden Books

2162. An excommunication reserved to the Apostolic See in a special manner (*speciali modo*) is incurred *ipso facto* by the publishers at the moment of publication of books written by apostates, heretics and schismatics in defence of apostasy, heresy or schism; also by persons who defend or knowingly read or retain (in their possession) without due permission the above-mentioned books and others which have been by name forbidden by Apostolic Letters (**Canon 2318,** § 1).

Authors and publishers who without the proper permission procure the printing of books of the Sacred Scriptures or annotations or commentaries on the same, incur *ipso facto* non-reserved excommunication (**Canon 2318,** § 2).

The work of apostates, heretics or schismatics must be a *book*. How large a work must be to be called a book, is not stated in the Code. Vermeersch-Creusen think that it should have about 250 octavo pages to be called a book.[49] That pamphlets, leaflets, periodicals, magazines, and newspapers, do not come under the prohibition of *books,* though they defend heresy, schism, or apostasy, was declared by the Holy Office on April 27, 1880, and on January 13, 1892.[50] The last-named decree considers as books periodicals issued by heretics, schismatics or apostates in defence of their errors, if these periodicals are bound into books or volumes. The books must be written by apostates, heretics or schismatics; if written by others (e.g., Catholics, Jews, or pagans), they do not fall under Canon 2318. Books published as manuscripts, or by the process of lithography, or photography, are not considered published in the ordinary sense of the term publication.

2163. Two classes of books are prohibited in Canon 2318, § 1: (1) books of apostates, heretics or schismatics defending heresy. Concerning these it has been declared in the above-mentioned Decree of April 27, 1880, that the reading of books of apostates or any author which merely *contain heresy* (*continentes hæresim*)

[49] *Epitome,* III, n. 517.
[50] *Acta S. Sedis,* XX, 368; XXIV, 625.

did not make the reader liable to the censure decreed by Pope Pius IX. This ruling may be applied also to Canon 2318, § 1; (2) books forbidden by name by Apostolic Letters. Most books which are on the Index of Forbidden Books have been condemned, not by Apostolic Letters but by Congregations of the Holy See (e.g., the former Sacred Congregation of the Index, the Sacred Congregation of the Holy Office). Only books condemned by name by the Supreme Pontiff himself are meant in Canon 2318, § 1. The form of the papal document (e.g., Bull, Constitution, Encyclical, Litteræ Apostolicæ, etc.) is immaterial.[51]

2164. Persons punished by Canon 2318, § 1, are: (1) the publishers of books of apostates, heretics or schismatics. It seems that the Latin term "editores" corresponds to the English term "publishers," and means the person or business firm which undertakes to put the book on the market. As a rule, the author is not the publisher of his own book, but gives it to a publishing firm; if he is his own publisher, he falls under the censures against publishers. Printers and other participants in the making of the books are not censured; (2) defenders of books of apostates, etc., and of books prohibited by name by Apostolic Letters. Defence seems to refer to words and actions by which the contents of the book are upheld as good and proper reading, and actions to save the book from destruction; (3) readers and possessors of the two classes of books who, in spite of the knowledge that it is forbidden under excommunication to read these books or have them in their possession, nevertheless read or keep them without due permission (cfr. Canons 1398, 1402–1405).

2165. Canon 2318, § 2, punishes with non-reserved excommunication incurred *ipso facto* authors and publishers of books of the Sacred Scriptures, and of annotations and commentaries on them, if the approval of the competent authorities of the Church was not obtained (cfr. Canons 1385, 1391). It is immaterial whether the entire Bible or parts of it are published, or whether they are published in the original or in translation. The notes or comments on the Sacred Scriptures would have to be of considerable volume to make a book; if it is a scriptural review or magazine dealing exclusively or for the most part with studies on the Bible and the individual issues are bound into

[51] Sole, "De Delictis et Pœnis," n. 328, 5.

volumes, they are considered books, and publication is forbidden under Canon 2318, § 2. On the general prohibition to publish books, periodicals, etc., on subjects of faith and morals without previous approval, cfr. Canon 1385.

Mixed Marriages before Non-Catholic Minister, and Non-Catholic Baptism or Education of Children

2166. Excommunication *latæ sententiæ* reserved to the Ordinary is incurred by Catholics:

(1) who contract marriage before a non-Catholic minister in violation of the prohibition of Canon 1063, § 1;

(2) who marry with the explicit or implied agreement that all or any of the children shall be educated outside the Catholic Church;

(3) who knowingly presume to offer their children to non-Catholic ministers for baptism;

(4) parents or those who take their place who knowingly have their children educated or instructed in a non-Catholic religion (**Canon 2319,** § 1).

Persons who do what is forbidden in § 1, nn. 2–4 are in addition to the excommunication suspected of heresy (**Canon 2319,** § 2).

2167. The offense under n. 1 consists in this, that a Catholic who marries a non-Catholic, baptized or unbaptized, approaches a non-Catholic minister as minister of religion, either before or after the Catholic marriage ceremony, to give or renew his marriage consent (cfr. Canon 1063; above, n. 1042). Many commentators restrict the penalty to Catholics who marry a non-Catholic, but some commentators assert that the penalty is incurred also by two Catholics who give or renew the marriage consent before a non-Catholic minister as minister of religion.[52] Two Catholics who marry before a non-Catholic minister are guilty of the offense of Canon 2316. In the former Canon Law there was an excommunication specially reserved to the Holy See visited upon Catholics who married before a non-Catholic minister as a minister of religion; the Holy Office declared that their offense was comprehended by the law of the Constitution

[52] Cappello, "De censuris," n. 125; Ayrinhac, "Penal Legislation," n. 213.

"Apostolicæ Sedis" against the *fautores hæresis*. The Third Plenary Council of Baltimore (n. 127) punished with *ipso facto* excommunication reserved to the local Ordinary Catholics who contracted or attempted to contract marriage before a minister of any non-Catholic sect. The law of the Code has superseded the particular law of the Council of Baltimore, in so far as the marriage of a Catholic with a non-Catholic before a non-Catholic minister is concerned. But the law of that Council remains, we believe, with reference to the marriage or rather attempted marriage of two Catholics before a non-Catholic minister, for the Code does not punish this offense of two Catholics with a *latæ sententiæ* censure (cfr. Canon 2316), and Canon 2221 empowers the legislators to enforce both the divine and the ecclesiastical law with penalties or to increase the penalty decreed by law (cfr. Canon 2244; above, n. 2085).

2168. To contract marriage with the explicit or implied agreement that some or all children are to be educated outside the Catholic Church, is an offense against both the divine and the ecclesiastical law. Though such an agreement will more frequently occur in marriage of Catholics with non-Catholics, the Code does not limit it to such marriages, but comprehends all marriages contracted under that agreement. If the sinful pact is made after the marriage, the offense does not fall under Canon 2319, § 1, n. 2, but rather under Canon 2316.

2169. Parents who, with full knowledge (*scienter*) of the prohibition and the penalty of the law of the Church, have their children baptized by a non-Catholic minister, and parents or others who have children educated or instructed in a non-Catholic religion, incur thereby excommunication, reserved to the Ordinary. On the meaning of "scienter," cfr. Canon 2229 (above, n. 2069).

TITLE XII

OF OFFENSES AGAINST RELIGION

2170. Persons who cast away the Sacred Species, or carry off or retain them for an evil purpose, are suspected of heresy, incur excommunication *latæ sententiæ* reserved in a most special manner to the Holy See, are branded *ipso facto* with infamy, and, if they are clerics, are to be deposed (**Canon 2320**).

Casting away (*abjecerit*) means to throw the Sacred Species intentionally on the floor or ground, or any place where they are exposed to irreverence, as though it were a morsel of common bread or any other trifling thing which one does not hesitate to throw away. The same penalties are incurred by those who carry away the Sacred Species for an evil purpose (*abduxerit ad malum finem*), or, if someone else has carried them off, who keep them for such purpose. As the evil purpose is not specified in the Code, any sinful purpose for which the Sacred Species are taken from the tabernacle or place of legitimate custody, or kept by some person after they had been taken by another, is comprehended in Canon 2320. The same crimes were severely forbidden by the former law, not however under censure *latæ sententiæ*: the offender was to be tried, and, if convicted in the ecclesiastical court of outrages against the Blessed Sacrament, he was to be delivered up to the civil authorities for capital punishment.[53]

Illegal Bination and Breaking of the Natural Fast before Celebrating Mass

2171. Priests who, in violation of the precepts of Canons 806, § 1, and 808, presume to say two Masses on the same day or to celebrate Mass after having broken the natural fast, shall be suspended from the celebration of Mass for a period of time to be fixed by the Ordinary in proportion to the special circumstances of the case (**Canon 2321**).

The penalty is not incurred by the very violation of the laws forbidding bination and the saying of Mass after breaking the natural fast, but the ecclesiastical judge or superior is ordered to inflict a vindicative penalty of suspension for a longer or shorter period in proportion to the gravity of the offense. The faculty of the bishop to allow bination on Sundays and holydays of obligation was discussed above (Volume I, n. 706). The permission to binate is given for the purpose of furnishing all the people with an opportunity of assisting at Mass on Sundays and holydays of obligation: as it is not personal to the

[53] Pope Innocent XI, Const. "Ad nostri Apostolatus," March 12, 1677; Alexander VIII, Const. "Cum alias," December 22, 1690; Benedict XIV, Const. "Ab augustissimo," March 5, 1744.

priest, a priest who takes the place of a pastor or assistant who has permission to binate may say two Masses. In unforeseen cases in which there is no time to recur to the bishop, permission to binate may be presumed: for example, if, in a parish which on Sundays has two Masses and two priests, one priest should suddenly take ill, the other priest may binate [54] provided no other priest can be secured with reasonable effort. If priests can be secured for Sundays and holydays without great difficulty, even the local Ordinary cannot give permission for bination (cfr. Canon 806, § 2).

2172. Even more severe than in the case of bination is the prohibition to say Mass after breaking the natural fast. That the Holy See is willing to grant to priests dispensation from the Eucharistic fast on Sundays and holydays of obligation, and to give the bishops faculties to dispense, has been already stated (cfr. Volume I, n. 710). The following are cited as excuses from the law that the priest must say Mass fasting: (1) the obligation of completing the Holy Sacrifice if a priest collapses after the consecration of one or both species; (2) if by mistake the priest pours water only into the chalice at the Offertory, and does not notice the mistake until he tastes it at Communion; (3) some authors consider the necessity of administering the Holy Viaticum as a sufficient reason to say Mass not fasting, supposing that Holy Communion could not be had any other way without great difficulty; (4) finally, the necessity of avoiding scandal among the people is also considered sufficient reason to say Mass after breaking the natural fast, because the obligation of the natural law to avoid public scandal is considered more serious than the positive ecclesiastical law to keep the Eucharistic fast.[55] However, the local Ordinary has the right to judge, and if he does not take the same view of the excuses as the priest, but penalizes him for saying Mass after the breaking of the fast, the priest is obliged to submit to the penalty.

Usurpation of Priestly Functions

2173. (1) If a person who is not an ordained priest pretends to say Mass or to hear sacramental confession, he incurs *ipso facto*

[54] Vermeersch-Creusen, "Epitome," II, n. 78.
[55] Noldin, "Theol. Moral.," III, n. 153.

excommunication reserved in a special manner to the Holy See: if he is a layman, he shall also be deprived of any pension or office which he may have in the Church, and shall be punished with additional penalties in proportion to the gravity of his guilt; if he is a cleric, he shall be deposed.

(2) If such a person usurps other priestly functions, he shall be punished by the Ordinary in proportion to the gravity of his guilt (**Canon 2322**).

To pretend to say Mass (*simulare*) means that one who is not a priest conducts such ceremonies that the attendants, or some of them, are led to believe that Mass is really said. It is immaterial how far the deceiver performs the actual ceremonies and recites the prayers of the Mass; it suffices that his actions as a whole make the onlooker believe that he is saying Mass. If the man was known to all present as lacking priestly ordination, his performance of the Mass ceremonies would not be a deception, and does not make him liable to the penalties of Canon 2322; it may be even entirely legitimate practice (e.g., the performance of the ceremonies of the Mass by seminarians who are soon to be ordained priests). A man who is known to all present as not being a priest, and who performs the ceremonies of Mass in the spirit of evil mockery or of sacrilegious derision, does not incur the penalties of Canon 2322: his crime may be more grievous than of the deceiver, but it is not the crime covered by Canon 2322.

2174. A person who is not a priest and pretends to hear sacramental confessions, representing himself by word or action as a priest, becomes liable to the penalties of Canon 2322, if he listens to the accusation of sins, even though he does not go so far as to pretend to grant absolution: the hearing of the sacramental confession (i.e., a confession made by a penitent to one whom he believes to be a priest for the purpose of obtaining sacramental pardon) suffices to incur the penalty. The penalties of Canon 2322 do not apply to men ordained to the priesthood, though they have been suspended, deposed, or degraded, because Canon 2322 speaks of persons only who do not possess the sacerdotal character.

2175. Finally, persons who usurp other sacerdotal functions (besides Holy Mass and hearing of confessions) are to be punished by the Ordinary in proportion to their guilt. Sacerdotal

functions are those which are reserved to the order of the priesthood either by the divine or the ecclesiastical law. It should be noted here that Canon 985, n. 7, inflicts an irregularity *ex delicto* on men who perform an act reserved to clerics in major orders without having received the order in question.

Blasphemy and Perjury

2176. Persons who commit blasphemy or perjure themselves outside of court, are to be punished at the discretion of the Ordinary, especially if they are clerics (**Canon 2323**).

Spoken or written words of insult to God or His saints or sacred things are forbidden by the divine, and are here condemned by the ecclesiastical law. If a person calls upon God to witness the truth of his words, and it is proved that he deliberately made false statement under oath, he is to be punished by the Ordinary at his discretion. If one perjures himself in an ecclesiastical court, he is to be punished by the judge in accordance with Canon 1743 (cfr. above, n. 1697).

Offenses Against the Laws on Mass Stipends

2177. Persons who offend against the precepts of Canons 827, 828, 840, § 1, shall be punished by the Ordinary in proportion to the gravity of their guilt, even with suspension or with deprivation of ecclesiastical benefice or office, or, in the case of lay persons, with excommunication, if the gravity of the offense calls for it (**Canon 2324**).

The former penalties *latæ sententiæ* for offenses in connexion with Mass stipends, inflicted by the Constitution "Apostolicæ Sedis" of Pope Leo XIII, and by the Decree "Vigilanti," of the Sacred Congregation of the Council, May 25, 1893, and reaffirmed by the Decree "Ut debita" of the same Congregation, May 11, 1904, are abolished by the Code (cfr. Canon 6, n. 5). The law now commands the Ordinary to punish the abuses condemned in Canons 827, 828, and 840, § 1, with penalties commensurate with the gravity of the transgressions (cfr. above, Volume I, nn. 726, 737). The offenses forbidden are: (1) every kind of negotiation or trading in Mass stipends (Canon 827); (2) the saying of fewer Masses than one agreed to say when

accepting the stipends (Canon 828); (3) the retaining of part of the manual stipends or deriving any profit from them when one commits the saying of the Masses to other priests (Canon 840). Since there is not an ecclesiastical offense unless the transgression is gravely sinful (cfr. Canon 2218, § 2), one has to examine whether the violations of the prohibitions in the Canons here referred to are grievous transgressions. The forbidden negotiation or trading with Mass stipends is, in the opinion of Vermeersch-Creusen,[56] a prohibition in which the smallness of the matter may excuse from mortal sin. To omit even one Mass which one is obliged to say for reason of a stipend seems to be a grave matter, for the act to which one has by contract obliged oneself is a serious matter, irrespective of the amount of the stipend. This is the opinion of the majority of recent authors; others hold that it is probably not a grievous sin unless the stipend is large enough to amount to a grave matter.[57] The retaining of part of the stipend or the making of profit from stipends which one transfers to another priest, is either a mortal or a venial sin according to the smaller or larger gain illegally made.

Superstition and Sacrilege

2178. Persons who practise superstition or perpetrate a sacrilege are to be punished by the Ordinary in proportion to the gravity of their guilt, without prejudice to the penalties ordained by law against some acts of superstition or sacrilege (**Canon 2325**).

Superstition comprehends a great variety of unlawful practices which are insulting to God and things sacred (e.g., divination, fortune-telling, magic, witchcraft, or by whatever other name the forbidden delving into the supernatural may be called). In more recent times mesmerism, hypnotism and spiritism have become fertile sources of superstition. The abuse of magnetism (mesmerism) for superstitious purposes has been repeatedly condemned by the Holy See;[58] in connexion with the use of hypnotism, the Holy See has cautioned those who employ it and

[56] "Epitome," III, n. 524.
[57] Vermeersch-Creusen, "Epitome," II, n. 106; Noldin, "Theol. Moral.," III, n. 184.
[58] Holy Office, April 21, 1841, July 30, 1856; *Acta S. Sedis*, I, 177.

submit to it for scientific purposes; the Holy See has also protested against interference with the spirit world.[59] Spiritism has indeed been condemned by Decree of the Holy Office, March 30, 1898.

Sacrilege consists in the unworthy use or treatment of sacred things and sacred persons. Certain things are of their nature sacred (e.g., the Sacraments); others become so by blessing or consecration legitimately bestowed on things or places by authority of the Church. Persons are rendered sacred by ordination or consecration or by other forms of dedication to the divine service by authority of the Church (e.g., by first tonsure, by religious profession).

Making and Spreading of False Relics

2179. Persons who make false relics, or knowingly sell, distribute or expose them for the public veneration of the faithful, incur *ipso facto* excommunication reserved to the Ordinary (**Canon 2326**).

The fraudulent making of relics and wilful coöperation in the selling, distributing, and exposing for public veneration of false relics is punished by Canon 2326, which does not deal with the sins of irreverence done against true relics by sale or other irreverent treatment. If a person who is in possession of a large relic of a saint or a beatified person should separate small particles of that relic and distribute them to others, he does not incur the censure because he distributes genuine relics, but this should not be done, because it may be impossible subsequently to prove their genuineness. Though one is certain of the genuineness of a relic, Canon 1283 forbids their public veneration without the authentication of a Cardinal, or a local Ordinary, or another ecclesiastic authorized by Apostolic indult to authenticate relics (cfr. above, n. 1309).

Profit-Making through Indulgences

2180. Persons who make profit from indulgences are *ipso facto* punished with excommunication reserved simply to the Apostolic See (**Canon 2327**).

[59] Holy Office, July 26, 1899; *Acta S. Sedis*, XXXII, 189; on Spiritism, *Acta S. Sedis*, XXX, 701.

The same offense was censured by the Constitution of Pope Pius V, "Etsi Dominici gregis," February 8, 1567, and by the Constitution "Quam plenum," January 2, 1569. In the former law persons inferior to bishops were punished with excommunication; the Code comprehends all persons except Cardinals (cfr. Canon 2227, § 2). The offense forbidden is to make any gain or profit from the granting or the publication of indulgences (i.e., an explicit or implied sale of indulgences). The Code does not limit the penalty to the granting and publication, but commentators seem to be agreed on this point, therein following the old law.

Violation of Corpses or Graves

2181. Persons who violate the bodies or graves of the dead with a view to theft or any other evil purpose, shall be punished with a personal interdict. They are *ipso facto* branded with infamy, and, if they are clerics, shall be deposed in addition to the other penalties (**Canon 2328**).

This Canon enforces the respect and honor due to the human body after death, both before and after burial. The Code does not say "bodies of the faithful," but "the bodies of the dead" —that is, human corpses generally, whether they are the bodies of baptized or unbaptized persons. Theft and other evil deeds, which violate the natural sanctity of the bodies and the graves, are forbidden. It may be necessary at times to dissect a human body for the sake of ascertaining the cause of death, or for the sake of science: of such purposes Canon 2328 does not speak, but only of *evil* purposes.

Violation of Churches and Cemeteries

2182. Persons who defile the sanctity of a church or cemetery in the manner described in Canons 1172 and 1207, shall be punished by the Ordinary with interdict from entering a church and other appropriate penalties in proportion to the gravity of their guilt (**Canon 2329**).

Canon 1172 enumerates the offenses by which a church is defiled or polluted, and Canon 1207 rules that the cemeteries are also defiled by the same offenses (cfr. above, nn. 1213, 1238).

TITLE XIII

OF OFFENSES AGAINST ECCLESIASTICAL AUTHORITIES, PERSONS AND THINGS

2183. With regard to the penalties enacted against offenses which may be committed in the election of the Supreme Pontiff, the only law to be considered is the Constitution of Pope Pius X "Vacante Sede Apostolica," December 25, 1904 (**Canon 2330**).

In this Constitution there are eight excommunications *latæ sententiæ*, and there is one in the Constitution "Commissum Nobis," January 20, 1904, which Constitution is confirmed by the Constitution "Vacante Sede Apostolica." All these excommunications are reserved to the Supreme Pontiff, so that nobody (not even the Major Penitentiary) can absolve from them except in danger of death.[60] These excommunications are as follows:

(1) the refusal of a Cardinal who is present in the Conclave to appear for the voting after the bell calling them has been sounded the third time, unless he is impeded by sickness (Const. V. S. A., n. 37);

(2) the sending of letters or writings of any kind (printed or otherwise) from outside to persons present in the Conclave (including Cardinals) or the sending of such material from the Conclave to persons outside, without first submitting them for the examination of the Secretary of the Sacred College and the prelates appointed for the custody of the Conclave (Const. V. S. A., n. 50);

[60] Vermeersch-Creusen (*Epitome*, III, n. 530) consider all these excommunications as *latæ sententiæ*, and this opinion is shared by Chelodi (*Jus Pœnale*, n. 68), Cappello (*De Censuris*, n. 184), and Cerato (*Censuræ Vigentes*, n. 85). However, Eichmann (*Das Strafrecht*, 146) considers the excommunication n. 7 as a penalty *ferendæ sententiæ*, because the Constitution when speaking of this penalty does not state that it is *latæ sententiæ*, or that it is incurred *ipso facto*, nor does it use an equivalent phrase. The authors who interpret it as an excommunication *latæ sententiæ* rely on n. 51 of the Constitution "Vacante Sede Apostolica," which rules that every excommunication imposed and decreed by this Constitution is reserved exclusively to the Supreme Pontiff, which, we believe, seems to indicate that the Constitution considers them excommunications *latæ sententiæ*. There is some controversy whether absolution *in casibus urgentioribus* from these excommunications can be given in accordance with Canon 2254. The commentators are divided on the point, but it seems to us that the concession of the said Canon does not apply to the penalties of the Constitution against offenses committed in reference to the election of the Supreme Pontiff, because Canon 2330 states that in regard to them the Constitution exclusively governs.

(3) violation of the secret in reference to all matters pertaining to the election of the Roman Pontiff and all other affairs done in Conclave or in the place of election (Const. V. S. A., n. 51);

(4) manifestation by Cardinals to their attendants or conclavists or to any other persons of things which directly or indirectly have reference to the voting, and also of the acts or decrees enacted in the meetings of Cardinals either before or during the Conclave (Const. V. S. A., n. 52). Title I, Chapter II, nn. 6–11, of the Const. "Vacante Sede Apostolica" describes the meetings of Cardinals after the vacancy of the Apostolic See has occurred, both before and after they enter the Conclave;

(5) simony committed in the election of the Roman Pontiff as condemned by former laws, notably the Constitution of Pope Julius II, "Cum tam divino," January 14, 1505; but the invalidity of the simoniacal election decreed by Pope Julius II (or by any other Pope) is revoked in order that there may be no pretext for attacking the validity of the election of the Supreme Pontiff (Const. V. S. A., n. 79);

(6) the discussion of a successor of the Roman Pontiff, while he is still living and without consulting him; the promise to vote for such future candidate; and all deliberation and discussion on this subject at private gatherings (Const. V. S. A., n. 80);

(7) the acceptance by Cardinals or any other members of the Conclave of the rôle of an intermediary of civil powers to present their "Veto" (or *Exclusiva*) of a possible candidate for the Supreme Pontificate; it is forbidden to present that veto even in the form of a mere desire or in any manner either to the College of Cardinals or to individual Cardinals, either before or during the Conclave (Const. "Commissum Nobis," and Const. V. S. A., n. 81);

(8) agreements, compacts, promises or any other obligations made or assumed by Cardinals which may restrict their freedom of voting or not voting for some one or several candidates (Const. V. S. A., n. 82);

(9) an attack on the letters which the legitimately elected Roman Pontiff may have issued on any business whatsoever before his coronation (Const. V. S. A., n. 88).

Disobedience to Orders of the Roman Pontiff or the Proper Ordinary, and Conspiracy

2184. Persons who stubbornly refuse to obey the legitimate precepts or prohibitions of the Roman Pontiff or their proper Ordinary shall be punished with appropriate penalties, not excluding censures, in proportion to the gravity of their guilt (**Canon 2331,** § 1).

Those who conspire against the authority of the Roman Pontiff or his legates or their own proper Ordinary, or against their legitimate commands, and also those who provoke subjects to disobedience towards them, shall be restrained by censures and other penalties; if they are clerics, they shall be deprived of dignities, benefices and other offices; if they are religious, they shall be deprived of active and passive vote and of office (**Canon 2331,** § 2).

Appeal from Laws and Commands of the Roman Pontiff to an Œcumenical Council

2185. Each and every one of whatsoever state, degree or condition—whether king, bishop or Cardinal—who appeals from the laws, decrees, or mandates of the reigning Roman Pontiff to an Œcumenical Council, are suspected of heresy, and incur *ipso facto* excommunication reserved in a special manner to the Apostolic See. Universities, colleges, chapters or other legal bodies, by whatsoever name they may be known, incur an interdict reserved in a special manner to the Apostolic See (**Canon 2332**).

The appeal from the authority of the Supreme Pontiff entails a denial of the principle enunciated by the Vatican Council that the Roman Pontiff has the supreme power of jurisdiction, independently of an Œcumenical Council. The bishops and Cardinals are specially mentioned to deprive them in this matter of the privilege of Canon 2227. Kings do not by law enjoy exemption from the canonical penalties, but, in virtue of Canon 2227, the Supreme Pontiff alone can issue the declaration of a penalty incurred by supreme heads of states. With reference to innocent members of a community or college which has been interdicted, cfr. Canon 2276.

Recourse to the Civil Power Against Letters or Acts of the Apostolic See or Its Legates

2186. Persons who have recourse to the laical power for the purpose of impeding any letters or acts issued by the Apostolic See or its legates, or who directly or indirectly prevent their promulgation or execution, or persons who injure or terrify because of these letters or acts those to whom these documents are directed or others, incur *ipso facto* excommunication reserved in an especial manner to the Holy See (**Canon 2333**).

The Church demands absolute independence from the civil powers in her sphere of action in the matters committed to her jurisdiction by Christ. Wherefore she strikes with excommunication: (1) persons (laymen or clerics) who have recourse to the civil power to impede the letters and acts of the Holy See, by which term also the Sacred Congregations, Tribunals and Offices of the Holy See are meant (cfr. Canon 7); (2) the civil authorities who forbid the promulgation or execution of the said documents; (3) the civil authorities who injure or terrify persons because of these documents.

Interference with the Liberty and Rights of the Church

2187. Excommunication reserved to the Holy See in a special manner is visited *ipso facto* upon the following:

(1) those who issue laws, mandates, or decrees against the liberty and rights of the Church;

(2) those who either directly or indirectly impede the exercise of ecclesiastical jurisdiction in the internal or external forum, having recourse for that purpose to any laical authority (**Canon 2334**).[60a]

This prohibition and penalty completes the protest of the Church against all interference of the civil powers with the freedom and rights of the Church. This Canon punishes the civil authorities who abuse their power against the Church and those who request the civil authorities to interfere with the jurisdiction of the Church. Clerics who are guilty of the offense spoken of in Canon 2334, are visited with additional penalties by Canon 2336, § 1.

[60a] Actual interference must have taken place to incur censure, cfr. App. III, 86.

Joining the Freemasons and Similar Societies

2188. Persons who have themselves enrolled in the masonic sect, or in other associations of the same kind which plot against the Church or the legitimate civil powers, incur *ipso facto* excommunication reserved simply to the Apostolic See (**Canon 2335**).

By his Constitution "In eminenti" of April 28, 1738, Pope Clement XII excommunicated those who joined the masons. To join the Fenians was forbidden under excommunication by the Holy Office on January 12, 1870. As the societies of the *Carbonari*, of the Nihilists and of the Anarchists are generally considered to be organizations which of set purpose plot the destruction of either Church or State, persons who join them with knowledge of the penalty of Canon Law incur the excommunication. There is considerable controversy whether enrolment in the socialistic, biblical, and clerical-liberal societies is forbidden under excommunication.[61] A further difficulty in determining whether a society is of the nature described in Canon 2335 arises from the fact that many societies bear a name or title which marks them as purely social or beneficent organizations, while in fact they are allied with the masons. The difficulty is increased by the fact that some of those societies change their names from time to time. Since the law of the Code against freemasonry and similar organizations is the same as that of the Constitution "Apostolicæ Sedis" (except as to the persons favoring these societies and neglecting to denounce to the ecclesiastical authorities their secret leaders, which two phrases of the said Constitution are dropped by the Code), the text-books on the former Canon Law and moral theology may be consulted. For the United States the Third Plenary Council of Baltimore (nn. 254–255), with the approval of the Holy See, issued the practical injunction that nobody should declare a certain society as forbidden under excommunication, until the case had been submitted to a committee consisting of all the archbishops, which the Council created for the purpose: if this committee could not reach a unanimous verdict, the matter was to be referred to the Holy See so that absolute uniformity of

[61] Cappello, "De censuris," n. 105.

discipline might be had on this matter in all the dioceses of the United States.

2189. As to the absolution of freemasons and adherents of other societies forbidden under excommunication, the faculty to absolve in occult cases is granted to the Ordinaries by Canon 2327, § 2. In cases in which the membership in those societies is known to a number of persons, and may thus be called public (cfr. Canon 2197; above, n. 2028), the excommunication is reserved to the Holy See. The faculties given by the Holy See to the local Ordinaries in the United States empower them to absolve from this censure under condition that the penitent separates himself entirely from the sect or society and abjures it, that he denounces clerics and religious whom he knows to belong to such sects or societies (cfr. Canon 2336, § 2), and that he surrenders to the one absolving him books, manuscripts, and insignia of the society which he possesses. These books, manuscripts and insignia are to be cautiously forwarded to the Holy Office as soon as possible, or, if this cannot be done for good and grave reasons, they are to be destroyed. A salutary penance is to be imposed in proportion to the guilt, together with the obligation of going to confession and the duty to repair the scandal given.[62] A former Instruction of the Holy Office declared that, if the formal renunciation of membership cannot be made to the sect or society without great danger, it may be delayed, provided there is no scandal given and no danger to the spiritual welfare of the penitent: the payment of dues and for very grave reasons attendance of the meetings might thus be continued until the danger arising from formal withdrawal is past.[63] The local Ordinaries may communicate this faculty habitually to the vicars-forane (deans) and in individual cases to any confessor. In virtue of special circumstances, they may subdelegate some confessors for a period of time specified at their discretion.

2190. The following societies have been forbidden without, however, the excommunication: The Independent Order of Good Templars, the Odd Fellows, the Sons of Temperance, the Knights of Pythias. The Holy Office declared on January 19, 1896, that

62 Holy Office, March 7, 1883 (*Acta S. Sedis*, XVI, 21).

63 January 19, 1896 (*Eccl. Review*, XIV, 361). Preuss, "A Study in American Freemasonry" (St. Louis, 1908).

passive membership may be retained under the following conditions: that the penitent joined the society in good faith (i.e., without knowing that it was forbidden); that no scandal is given by retaining passive membership; that it is impossible to withdraw from it without grave loss; that there is no danger of perversion to the penitent or his family, and especially that in case of death he shall not permit the society to bury him. For the sake of passing judgment on the conditions and for uniformity of discipline, all cases of passive membership must be submitted either to the Apostolic Delegate or to the Archbishop of the respective ecclesiastical Province.[64]

Penalty of Clerics and Religious who Impede Ecclesiastical Liberty, Rights and Jurisdiction by Recourse to Civil Power, and of Clerics Joining the Masonic or Similar Organizations

2191. Clerics who have committed the offenses spoken of in Canons 2334–2335 shall, in addition to the penalties decreed in these Canons, be punished with suspension from or even deprivation of any benefice, office, dignity, pension or position which they may hold in the Church. Religious shall be deprived of office and active and passive vote, and visited with other penalties in accordance with their constitutions (**Canon 2336,** § 1).

Clerics and religious who join the masons or other similar societies shall, moreover, be denounced to the Sacred Congregation of the Holy Office (**Canon 2336,** § 2).

Pastors and Other Priests who Incite the People to Interfere with Ecclesiastical Jurisdiction

2192. If, for the purpose of hindering the exercise of ecclesiastical jurisdiction, a pastor shall dare to stir up the populace, to promote public subscriptions in his favor, to stir up the people by speeches or writings, or to take other similar actions, he shall be punished at the discretion of the Ordinary with penalties proportioned to his guilt, and, if necessary, even with suspension (**Canon 2337,** § 1).

In the same manner the Ordinary shall punish a priest who

[64] Holy Office, June 26, 1913.

excites the multitude in any manner to prevent a priest who has been legitimately nominated as pastor or administrator from entering a parish (**Canon 2337,** § 2).

Canon 2337, § 1, has special reference to the case of removal of a pastor from his parish. The Code points out the manner of procedure (cfr. Canons 2147–2162) in the removal of pastors, and the means of defence which may be adopted by a pastor who believes himself treated unjustly. He may undoubtedly request that some witnesses are heard in his favor, and, if the decision is pronounced against him, an irremovable pastor may demand another hearing (cfr. Canon 2153). Against the final decree of removal there is no other resort than recourse to the Sacred Congregation of the Council. If a pastor stirs up the people of the parish and induces them to resist the orders of the local Ordinary, he is guilty of disobedience to the ecclesiastical authority, even though his removal was unjust. For the sake of the public welfare, the Church forbids him to employ the means of defence condemned in Canon 2337, § 1.

If any priest arouses the people to prevent a pastor or administrator legitimately appointed by the local Ordinary from taking possession of his office, the priest is guilty of interference with the exercise of ecclesiastical jurisdiction and makes himself liable for severe punishments.

Unauthorized Absolution from Excommunication, Participation in Crime of an *Excommunicatus Vitandus,* Violation of Censures, Liability for Interdict on a Place or a Legal Body

2193. Persons who presume to absolve without the proper faculty from an excommunication *latæ sententiæ* reserved to the Apostolic See in a most special or in a special manner, incur *ipso facto* excommunication simply reserved to the Apostolic See (**Canon 2338,** § 1).

Persons who extend any aid or favor to an *excommunicatus vitandus* in reference to the offense for reason of which he was excommunicated, and clerics who knowingly and of their own accord participate in divine services with the *vitandus,* and admit him to divine services, automatically incur excommunication reserved simply to the Apostolic See (**Canon 2338,** § 2).

Persons who knowingly celebrate or have others celebrate divine services in interdicted places, or persons who for the celebration of divine services forbidden by a censure admit clerics excommunicated, interdicted, or suspended by a declaratory or condemnatory sentence, incur automatically an interdict from entering a church, until they have made due satisfaction in the opinion of him whose sentence they spurned (**Canon 2338,** § 3).

Persons who have been the cause of the placing of an interdict on a locality or on a community or college, automatically incur a personal interdict (**Canon 2338,** § 4).

Canon 2338, § 1, punishes "presumption" in absolving from the censures there specified. Canon 2229, § 2, explains the meaning of presumption in connection with censures. The cooperation in § 2 takes place after the person has become an *excommunicatus vitandus:* as this Canon does not treat of cooperation in the commission of the offense itself, the Code here supposes that the excommunicated person perseveres in the same offense, and is assisted or supported in his sinful perseverance by others. Whether clerics who deliberately and of their own will communicate with an *excommunicatus vitandus* in divine services, incur the excommunication by that fact alone, or whether they incur it only by communicating with him by admitting to divine services (*et ipsum in divinis officiis recipientes*), depends on how the *et* in the above phrase is interpreted, whether disjunctive or copulative. Most commentators, basing their opinion on the former law, consider it as copulative, so that " communicantes et recipientes" together constitute the offense of forbidden *communicato in divinis* of clerics with an *excommunicatus vitandus.* The admitting to divine service seems to mean that a cleric who is an *excommunicatus vitandus* is admitted to active performance of the *divina officia* (cfr. Canon 2256, n. 1), not merely admitted to passive assistance. The admitting cleric must be one who, in virtue of his office, has the right to permit clerics to exercise sacred functions in a place (e.g., the pastor or rector of a church).

The coöperation of clerics in the violation of local interdicts and of censures is punished in Canon 2338, § 3, with a vindicative penalty of interdict from entering a church, which lasts until the authority who interdicted the place or who issued the declaratory or condemnatory sentence of the censure has passed

judgment on the condign satisfaction for the offense. Indirectly, therefore, this penalty is reserved to that authority.

Canon 2338, § 4, rules that persons who were the cause of the interdict on a place or a community or college are automatically under personal interdict. The consequences of a personal interdict are declared by Canon 2275. This personal interdict is not reserved.

Violations of the Laws on Deprivation of Christian Burial

2194. Persons who, in violation of the prohibition of Canon 1240, dare to order or force the ecclesiastical burial of infidels, apostates from the faith, or heretics, schismatics, or other persons, either excommunicated or interdicted, incur excommunication *latæ sententiæ* not reserved; persons who of their own accord give ecclesiastical burial to the above-mentioned, incur an interdict from entering a church reserved to the Ordinary (**Canon 2339**).

The penalty is inflicted on persons who have the power to order or force the Christian burial of the bodies of persons enumerated in this Canon. The interference with the rights of the Church by the civil authorities in ordering or forcing the bishop or pastor to violate the law of the Church is punished automatically with non-reserved excommunication. The terms *mandare seu cogere* seem to suggest that the *mandantes* and the *cogentes* are the same actors; a few commentators are of the opinion that private individuals who force the ecclesiastical burial by threats, violence, etc., are also excommunicated. Commentators on the Code—and indeed commentators on the Constitution "Apostolicæ Sedis," where the same penalty is visited on those who command or force the ecclesiastical burial of heretics and persons excommunicated or interdicted by name—do not agree as to what is meant by ecclesiastical burial. Canon 1204 states that ecclesiastical burial consists in the transfer of the body to church, the exequies held over it in church, and the interment in a place destined for the burial of the faithful. Canon 2219 states that, in penalties, the more benign interpretation is to be made. As the transfer of the body to church in the manner of a liturgical function is not in vogue in the United States, there remain only the exequies and the burial in

consecrated or blessed ground. The burial in a Catholic cemetery may also not be possible—e.g., in places where the Catholics have not a cemetery of their own. It may, therefore, be said with Chelodi [65] that ordinarily the three elements are necessary to constitute ecclesiastical burial, unless the circumstances or the conditions of places make one or the other element of Christian burial impossible or of no account.

Persons who of their own free will grant Christian burial to those enumerated in Canon 2339 thereby incur interdict from entering a church. This interdict is incurred by ecclesiastics only, who in virtue of their office have the right to concede ecclesiastical burial; laymen have no such right.

Canon 2339 mentions the persons whose ecclesiastical burial may not be insisted on or conceded under the penalties enumerated. Reference is made to Canon 1240, § 1, in which these same persons and some other classes are enumerated. Sole [66] seems to maintain that the penalties of Canon 2339 apply to the ecclesiastical burial of all persons enumerated in Canon 1240, but many commentators restrict the penalties of Canon 2339 to those persons who are mentioned in the Canon, because these are specifically enumerated, whereas Canon 1240 enumerates in general all persons to whom ecclesiastical burial is to be denied. The reference to Canon 1240, § 1, in Canon 2339 is given, we believe, to indicate that the penalties for forcing ecclesiastical burial or conceding it apply only when the persons enumerated in Canon 2339 have not given any signs of repentance before death.

Obduracy in Censures

2195. If a person with obstinate mind remains under the censure of excommunication for one year, he is suspected of heresy (**Canon 2340,** § 1).

If a cleric remains under censure of suspension for half a year, he shall be gravely admonished; if he does not abandon his obstinacy after the lapse of a month from such admonition, he shall be deprived of any benefices or offices that he may possess (**Canon 2340,** § 2).

[65] *Jus Pœnale,* n. 73.

[66] "De Delictis et Pœnis," n. 367; Vermeersch-Creusen, "Epitome," III, n. 538.

The suspicion of heresy (cfr. Canon 2315) is treated by the Code as a separate offense. The Council of Trent[67] had the same law as Canon 2340, § 1. Note that the Code speaks of a cleric who remains under censure of suspension for more than six months, because the censure is imposed by the Church to move the guilty person to repentance, and, as soon as he repents and complies with the demands of his superiors, he has a right to absolution. If the suspension is inflicted by the way of a vindicative penalty, repentance and satisfaction do not give him a right to dispensation from the penalty: this penalty lasts for the period for which it was inflicted, or, if imposed indefinitely, it lasts at the discretion of the superior who imposed it.

Violation of the Privilege of the Ecclesiastical Forum

2196. If, in violation of the precept of Canon 120, anyone dares to cite before a laical judge one of the Cardinals, Legates of the Apostolic See, or major officials of the Roman Curia in affairs pertaining to their office, or one's own proper Ordinary, he incurs automatically excommunication reserved in a special manner to the Apostolic See. If anyone dares to cite another bishop—even a mere titular bishop, abbot or prelate *nullius*—or the supreme superior of any religious organization of papal law, he automatically incurs excommunication reserved simply to the Apostolic See. Finally, if a cleric cites any other person who enjoys the *privilegium fori* before a laical judge without the previous permission from the local Ordinary, he automatically incurs suspension from office reserved to the Ordinary; if a lay person commits this offense, he shall be punished with condign penalties in proportion to his guilt by the proper Ordinary (**Canon 2341**).

Canon 120 explains the privilege of the forum: it states that ecclesiastics may be sued in an ecclesiastical court only, and what ecclesiastical authorities have the right to grant permission to a plaintiff to bring suit in the secular courts (cfr. above, Volume I, n. 92). If a person with full knowledge of this law and the penalties for its violation institutes suit against a person who, by the law of the Church, enjoys the privilege of the forum, he incurs one of the penalties of Canon 2341, varying

[67] Sessio XXV, cap. 3, *De Reform.*

according to the various degrees of the ecclesiastical persons there enumerated. The major officials of the Roman Curia [68] have the same special protection as is accorded to Cardinals, Legates of the Holy See and the proper Ordinary, and thus may not be sued in the secular courts in connection with affairs of their office. In other affairs they have the common protection of ecclesiastical persons according to their rank. If a person demands that a cleric be called as witness, and has the summons issued to him, he does not incur the censures of Canon 2341. Before the promulgation of the Code there was controversy among canonists [69] as to whether the summoning of clerics as witnesses was punished with excommunication specially reserved to the Holy See. The *Motu proprio* of Pope Pius X, "Quantavis diligentia," October 9, 1911, reads: "Quicumque privatorum . . . nullo potestatis ecclesiasticæ permissu, ad tribunal laicorum vocent personas quasvis ecclesiasticas, ibique adesse compellant." [70] Though the Code punishes with censures those only who sue clerics before laical judges without the permission of the authorities of the Church, it is nevertheless sinful to force them to appear as witnesses without obtaining the permission of the Church in view of the exemption which the Church bestows on clerics in this matter. A judge who by the law of the country is forced to summon to his court ecclesiastics sued by others, does not incur the penalties of Canon 2341, because the Holy Office, in an Instruction to a certain Vicar Apostolic (February 1, 1871; *Collectanea de Prop. Fide,* II, n. 1364) explained that the term "cogentes" of the censure in the Constitution "Apostolicæ Sedis" indicates that the excommunication does not affect subordinates even though they are judges, but those who without being forced by anyone drag clerics before the secular tribunals or force others to do so.

The privilege of the forum may, as Canon 120 indicates, be modified (*nisi aliter pro locis particularibus legitime provisum fuerit*). In the United States the government has never recognized the exemption of clerics from being sued in its courts, and the Third Council of Baltimore says that, in order to uphold

[68] The major officials of the Roman Curia are enumerated in the Constitution "Sapienti consilio" of Pope Pius X, June 29, 1908 (*Acta Ap. Sedis,* I, 78, sqq.).

[69] Sole, "De Delictis et Pœnis," n. 372.

[70] *Acta Ap. Sedis,* III, 555.

ecclesiastical immunity as much as is possible among us, the priests are strictly forbidden to sue another priest or cleric, even in temporal affairs, in the secular courts without previous written permission of the bishop. The Council does not forbid lay persons to sue clerics in the secular courts,[71] and Ayrinhac is of the opinion (which seems to be a correct conclusion from the Third Plenary Council of Baltimore) that lay persons are implicitly granted permission to sue clerics in the secular courts.[72]

Violation of the Law of Enclosure

2197. Excommunication simply reserved to the Apostolic See is automatically incurred:

(1) by persons of whatever class, condition or sex who violate the enclosure of nuns by entering their monasteries without legitimate permission, and also by persons who introduce or admit them. If they are clerics, they shall, moreover, be suspended for a period of time to be fixed by the Ordinary in proportion to the gravity of their guilt;

(2) by women who violate the enclosure of religious men in solemn vows, and by the superiors and others, whosoever they may be, who admit or introduce women of any age; moreover, the religious who introduce or admit them shall be deprived of any office which they may have and of active and passive vote;

(3) by nuns who unlawfully leave the enclosure in violation of the precept of Canon 601 (**Canon 2342**).

The law forbids men and women to enter the enclosure of Sisters in solemn vows. There are some Sisterhoods in Europe whose rule prescribed solemn vows, but these have been reduced to simple vows by authority of the Holy See. Such Sisterhoods do not come under Canon 2342.[73] Boys and girls under the age of puberty (that is, under fourteen and twelve years respectively) do not incur the censure by entering the enclosure of nuns, but adults who induce, invite, or admit them do not escape the penalty of Canon 2342 (cfr. Canon 2230).

The enclosure of men in solemn vows is violated by the entrance of women and girls, and if the superior or any other

71 *Decreta Conc. Plen. Balt. III*, n. 84
72 *Penal Legislation*, n. 279.
73 Vermeersch-Creusen, "Epitome," n. 541.

person, either of the community or an outsider, orders, forces or assists them to enter, or admits or invites them to enter, the censure is incurred, no matter how young the girl may be (*cuiuscumque ætatis*).

Nuns who leave the enclosure without due permission given by law in certain cases or by the Holy See (cfr. Canon 601), incur excommunication. The Code says "moniales": consequently, although Sisters who have not yet made solemn profession, novices and postulants are obliged to observe the law of enclosure, they do not incur the censure by violating this law. In opposition to the opinion of the majority of commentators on the Code, Sole [74] maintains that temporarily professed Sisters and postulants in monasteries of nuns are also subject to the excommunication, if they unlawfully leave the enclosure. On the law of enclosure, cfr. Volume I, nn. 509–513.

Violation of the *Privilegium Canonis*

2198. Persons who lay violent hands on the person of the Roman Pontiff:

(1) automatically incur excommunication reserved in a most special manner to the Apostolic See, and *ipso facto* become *excommunicati vitandi;*

(2) are automatically branded with infamy;

(3) if they are clerics, they must be degraded (**Canon 2343,** § 1).

Persons who lay violent hands on the person of a Cardinal or a Legate of the Roman Pontiff:

(1) automatically incur excommunication reserved in a special manner to the Apostolic See;

(2) are *ipso facto* branded with infamy;

(3) must be deprived of benefices, offices, dignities, pensions and any position which they may have in the Church (**Canon 2343,** § 2).

Persons who lay violent hands on the person of a patriarch, archbishop, or bishop (even a titular bishop), automatically incur excommunication reserved in a special manner to the Apostolic See (**Canon 2343,** § 3).

Persons who lay violent hands on the person of other clerics

[74] *De Delictis et Pœnis,* n. 374.

or on religious men or women, automatically incur excommunication reserved to the proper Ordinary, who shall, moreover, punish them with other appropriate penalties in his discretion (**Canon 2343,** § 4).

Canon 119 states that those who inflict bodily injury on clerics are guilty of sacrilege. The protection against bodily injury of clerics and religious is called the "privilegium canonis." This term is taken from Canon 15 "Si quis suadente diabolo," of the Second Lateran Council, held under Pope Innocent II (1139), which declared that persons who do bodily injury to clerics or religious automatically incur excommunication reserved to the Apostolic See. The Constitution "Apostolicæ Sedis" punished with excommunication reserved to the Apostolic See in a special manner persons who inflicted bodily injury on Cardinals, patriarchs, archbishops, bishops, or Legates of the Apostolic See, and explicitly stated that the coöperators in the attack on such persons were liable to the same penalty. As the Code does not explicitly mention the coöperators, a few commentators on the Code are led to the conclusion that persons who participate in the attack on ecclesiastical dignitaries and common clerics do not incur the penalties of Canon 2343.[75] However, the Code in Canon 2231 establishes the general principle for all offenses and their penalties, when it states that, where several persons concur in the commission of an offense in the manner specified in Canon 2209, §§ 1–3, all are liable to the same penalty unless the law explicitly states otherwise. Wherefore, there can be no doubt that persons who coöperate in attacking a cleric in the manner described in Canon 2209, §§ 1–3, are liable to the penalties of Canon 2343.

Verbal Injury to Clerics

2199. Any person who in public periodicals, speeches, or pamphlets, has injured (i.e., calumniated) either directly or indirectly the Roman Pontiff, the Legates of the Roman Pontiff, the Sacred Congregations at Rome, the Tribunals of the Apostolic See and their major officials, or his proper Ordinary, or who has excited animosity or hatred against their acts, decrees, deci-

[75] Cappello, "De censuris," n. 59; Ayrinhac, "Penal Legislation," n. 288; Augustine, "Commentary," VIII, 378.

sions or sentences, shall—not only at the instance of the party, but also *ex officio*—be compelled by the Ordinary even with censures to make satisfaction, and shall be punished with appropriate penalties and penances in proportion to the gravity of his guilt and the necessity of repairing the scandal (**Canon 2344**).

The "injuriæ" of Canon 2344 include all offensive, insulting remarks, all slanders and revelations of secret faults or defects, and finally all agitation against the official actions of the above-mentioned ecclesiastical authorities. Private conversation injurious to the person or office of the said dignitaries is not mentioned in Canon 2344, but, if through the often-repeated guilty conversation such talk becomes public, the Ordinary has the right to proceed against such persons, even though their offense does not fall under the terms of Canon 2344—"public periodicals, speeches or pamphlets" (cfr. Canon 2222).

Usurpation of the Goods and Rights of the Roman Church

2200. Persons who usurp or retain, personally or through others, goods and rights pertaining to the Roman Church, automatically incur excommunication reserved in a special manner to the Apostolic See. If they are clerics, they shall also be deprived of dignities, benefices, offices, and pensions, and shall be declared disqualified to obtain them (**Canon 2345**).

Most commentators on the Code hold that this Canon refers exclusively to the temporal dominions and rights of the former Papal States. The Constitution "Apostolicæ Sedis," which had the same censure against the above acts of injustice, explicitly mentioned coöperators. Some commentators on the Code state that the coöperators are not comprehended in Canon 2345, because usurpation and detention of the goods and rights only are punished. Nevertheless, the Code punishes with the same penalty all coöperators in the usurpation or detention, if they coöperate in the manner described in Canon 2209, §§ 1–3 (cfr. Canon 2231).

Usurpation and Detention of Temporal Ecclesiastical Goods and Property

2201. If anyone, either in person or through others, presumes to convert to his own use and usurp ecclesiastical goods of any kind, whether personal or real, or to prevent those to whom such goods rightfully belong from receiving the fruits or income from ecclesiastical goods, they shall be subject to excommunication until they have made complete restitution of the goods, have removed the above-mentioned obstacles to the reception of the revenue or income by those entitled to it, and have afterwards obtained absolution from the Apostolic See. If a patron of a church or church property should be guilty of the above offense, he is automatically deprived of his right of patronage. A cleric who has been guilty of this offense or has consented to it shall, in addition, be deprived of all benefices whatsoever, shall be rendered disqualified to obtain any others, and shall be suspended from the exercise of his orders at the discretion of the Ordinary, even after he has made complete satisfaction and obtained absolution (**Canon 2346**).

The theft of ecclesiastical goods is not meant here, but rather the appropriation of ecclesiastical property to one's own benefit, as though one had a right to it (i.e., the confiscation and spoliation of the ecclesiastical goods in the name of law and on the basis of a pretended right to them). Coöperation in the usurpation and detention are to be judged according to Canons 2231 and 2209, §§ 1–3.

Illegal Alienation of Ecclesiastical Goods

2202. In addition to the nullity of the act and the obligation—which is to be enforced even with censures—to make restitution of the goods unlawfully acquired and the duty to repair the damages which may have been caused, a person who presumes to alienate ecclesiastical goods or gives his consent thereto in violation of the precepts of Canons 534 and 1532, shall be punished as follows:

(1) if there is question of goods of a value of not over one

thousand francs, he shall be punished with appropriate penalties by the legitimate ecclesiastical superior;

(2) if the goods have a value of over one thousand and less than thirty thousand francs, a patron who is guilty of illegal alienation shall be deprived of the right of patronage; an administrator of his office of administration; a religious Superior or religious *œconomus* of his office and of eligibility to acquire any other office, in addition to other appropriate penalties to be imposed by the Superiors; an Ordinary and other clerics who hold an office, benefice, dignity, or position in the Church, shall pay double the amount to the church or pious institute which has been injured; other clerics shall be suspended for a length of time to be determined by the Ordinary;

(3) if the *beneplacitum* of the Holy See demanded by the above-mentioned Canons (534 and 1532) has been knowingly omitted, all who are in any manner guilty, either as givers or receivers of the goods or by consenting to the alienation, automatically incur in addition excommunication which is not reserved (**Canon 2347**).

On the alienation of ecclesiastical goods generally, cfr. Canons 1530–1534 (above, nn. 1523–1527); on the alienation of goods possessed by religious organizations, cfr. Canon 534 (Volume I, nn. 414–416).

Unjust Withholding of Goods from Pious Institutes

2203. Any person who either by donation, or last will, or as a trustee, comes into possession of a legacy or donation destined for pious institutes, and neglects to fulfill his obligation, shall be forced to do so by the Ordinary even with censures (**Canon 2348**).

The "causæ piæ" which we render by pious institutes comprehend all works of religion and Christian charity, e.g., churches, monasteries and convents, schools for the poor, hospitals, and other houses of charity and mercy conducted under ecclesiastical authority. In virtue of Canon 1515, the local Ordinary is the legal executor of all bequests and donations made in favor of pious institutes (cfr. Canons 1515–1516; above, nn. 1508–1509).

Refusal of Legitimate Contributions and Taxes

2204. Persons who refuse to make the legitimate contributions due by precept of Canons 463 and 1507, shall be punished at the discretion of the Ordinary until they have satisfied their obligation (**Canon 2349**). With reference to the contributions or fees, cfr. our commentary on the above-mentioned Canons (Volume I, n. 339; above, n. 1496).

TITLE XIV

OF OFFENSES AGAINST LIFE, LIBERTY, PROPERTY, GOOD REPUTE AND CHRISTIAN MORALITY

Abortion, Suicide and Attempted Self-Destruction

2205. Persons who procure abortion, the mother not excepted, automatically incur excommunication reserved to the Ordinary at the moment the crime takes effect; if they are clerics, they shall also be deposed (**Canon 2350,** § 1).

Persons who lay hands on themselves shall, if death ensues, be deprived of ecclesiastical burial in accordance with the precept of Canon 1240, n. 3. If they do not die, they shall be barred from legal ecclesiastical actions, and, if they are clerics, they shall be suspended for a period of time to be determined by the Ordinary, and deprived of benefices or offices to which the care of souls in either the internal or external forum is attached (**Canon 2350,** § 2).

The nature of the crime of abortion and the various ways in which it may be effected are discussed by all canonists and moralists who comment on the penalties of the Constitution "Apostolicæ Sedis." The Code does not change the former law on abortion, but it decides the former controversy among canonists whether the mother who procures abortion in her own case incurs the penalty, by stating explicitly that the mother is not excepted from the penalty. As to accomplices in the crime, there was also much uncertainty, but the Code gives one universal rule about participation in crimes forbidden under penalty of the law by stating that all participants who share in the execution of the crime in the manner pointed out in Canon

2209, §§ 1–3, incur the same penalty as the principal perpetrators (cfr. Canon 2231). There is some controversy among commentators of the Code as to whether grave fear excuses from the censure (e.g., when an unmarried woman is driven to abortion by the fear of exposing her guilt, or if the husband by threats or continued molestation forces the wife to the crime).[76] From Canon 2229, § 3, n. 3, one may justly conclude that grave fear does excuse from penalties *latæ sententiæ,* unless the crime amounts to the contempt of the faith or prejudices the spiritual welfare of the public. As, however, abortion is usually a secret crime against the life of the unborn child, it cannot be said that it belongs to the class of crimes which do public injury to the spiritual welfare of the people.

Suicide and attempted suicide are forbidden under penal sanctions. Canon 2212 states that when the attempt of a crime is visited in law with a special penalty, the attempt constitutes a true offense. Canon 2350, § 2, makes the attempt of suicide an offense in law by specifying the penalties for such an attempt. The Code does not inflict a penalty *latæ sententiæ* on suicide or attempted suicide, but commits the judgment of the culpability of the act to the respective Ordinaries.

Duel

2206. Besides the penalty of Canon 1240, n. 4, persons who fight or merely challenge to a duel, or accept the challenge, or aid or favor it in any manner, or purposely are present as spectators, or permit it, or do not in so far as they can forbid it, automatically incur excommunication reserved simply to the Apostolic See, no matter what their dignity may be. The principals and their seconds are in addition automatically branded with infamy (**Canon 2351**).

The Constitution "Apostolicæ Sedis" pronounced the same censures against the principals, accomplices, spectators, etc., of a duel, and adds the penalty of infamy against the duelling parties and their seconds. The Constitution "Detestabilem" of Pope Benedict XIV, November 10, 1752, decreed that all duellists who died from a wound received in the duel should be deprived of ecclesiastical burial, though they had given signs of

[76] Vermeersch-Creusen, "Epitome," III, n. 551.

repentance and been absolved from the sin and censure. The Code permits ecclesiastical burial, if signs of repentance are given (cfr. Canon 1240).[76a]

Unjust Coercing of Persons to Embrace the Clerical or Religious States

2207. Excommunication, not reserved, is automatically visited upon all persons, of whatever dignity, who in any manner force either a man to embrace the clerical state or man or woman to enter a religious organization, or to make religious profession of solemn or simple, perpetual or temporary vows (**Canon 2352**).

The Church demands that the candidates for the clerical and the religious state be absolutely free in offering their lives to the service of God and the Church. Canon 214 rules that, if a man proves that he was constrained by grave fear to receive major orders, he can obtain release from the obligations of the major orders and return to secular life. Canons 542 and 572 state that the reception into the novitiate and the profession of vows are invalid, if either of these steps was taken because of grave fear.

Abduction

2208. Men who, with a view to marriage or for the gratification of lust, carry off a woman by force or deceit against her will, or a woman of minor age who consents to elope without the knowledge or against the objection of her parents or guardian, are automatically deprived of the right to legal ecclesiastical actions, and shall moreover be chastized with other penalties in proportion to the gravity of their guilt (**Canon 2353**). On the marriage impediment of abduction, cfr. Canon 1074 (Volume I, n. 1061). In the case of the impediment of marriage, the forcible detention of a woman in the place of her residence or in a place to which she came of her own free will, is equivalent to abduction; in the penalty, however, abduction must be taken in its natural and obvious meaning.

[76a] Concerning combats of students called "Mensuren," cfr. App. III, 88.

Offenses Against Life, Liberty and Property

2209. A lay person who has been legitimately declared guilty of the crime of homicide, of abduction of minors of either sex, of selling a human being as a slave or for any other evil purpose, of usury, robbery, theft under aggravating circumstances changing the species of sin (e.g., theft of things sacred) or ordinary theft in a very grave matter, of incendiarism or malicious and very grievous destruction of things, of grave mutilation or wounding or violence, shall automatically be deprived of the right to legal ecclesiastical actions and of every position which he may have in the Church, besides the obligation of repairing the damages (**Canon 2354,** § 1).

If a cleric has committed any of the crimes enumerated in the first paragraph of this Canon, he shall be punished by the ecclesiastical court in proportion to his guilt with penances, censures, deprivation of office, benefice and dignity, and even with deposition, if the circumstances demand it; if he has been guilty of culpable homicide, he shall be degraded (**Canon 2354,** § 2). Regarding the deposition and degradation of clerics, Canons 2303, § 3, and 2305 rule that these penalties may be inflicted only for crimes to which the law attaches those penalties.

Verbal Injury to Others

2210. A person who inflicts injury upon another, not by bodily attack, but by words or writings or in any other manner, or who damages his good reputation, may not only be forced in accordance with Canons 1618 and 1938 to make due satisfaction and repair the damages done, but may in addition be punished with appropriate penalties and penances. If the offender be a cleric, and the gravity of the offense demands it, he may be punished even with suspension or removal from office and benefice (**Canon 2355**).

Bigamy

2211. Persons guilty of bigamy—that is, an attempted marriage, even by a mere civil ceremony, by persons validly married —are automatically branded with infamy. If they do not heed

the admonition of the Ordinary, but continue to live in the unlawful union, they are to be punished, according to the gravity of their guilt, either with excommunication or personal interdict (**Canon 2356**).

Offenses Against Chastity

2212. Lay persons who have been legitimately declared guilty of the commission of crimes against the sixth commandment with minors under sixteen years of age, or of rape, sodomy, incest, or traffic in vice (*lenocinium*), are automatically branded with infamy, besides incurring the other penalties which the Ordinary may think proper to impose (**Canon 2357,** § 1).

Persons who have committed a public crime of adultery, or who publicly live in concubinage, or who have been legitimately condemned of other offenses against the sixth commandment, shall be excluded from legal ecclesiastical acts until they have given signs of true repentance (**Canon 2357,** § 2).

2213. Clerics in minor orders who commit an offense against the sixth commandment shall be punished in proportion to the gravity of their guilt, and even with discharge from the clerical state, if the circumstances of the offense merit this penalty; they are in addition liable to the penalties of Canon 2357, if the offense is one of those specified in that Canon (**Canon 2358**).

2214. Clerics in major orders, either secular or religious, who are guilty of concubinage and have not heeded the admonition to amend, shall be forced to abandon the illicit cohabitation and to repair the scandal by suspension *a divinis* and deprivation of the income of their office, benefice, or dignity, with the observance of the precepts of Canons 2176–2181 (**Canon 2359,** § 1).

If they have committed an offense against the sixth commandment with minors under sixteen years of age, or been guilty of adultery, rape, bestiality, sodomy, traffic in vice, or incest with blood-relatives or relations by marriage in the first degree, they shall be suspended, declared infamous, deprived of every office, benefice, dignity, or position that they may hold, and in more grievous cases they shall be deposed (**Canon 2359,** § 2).

If they have sinned against the sixth commandment in other ways, they shall be corrected with appropriate penalties in proportion to the gravity of their sin, even with deprivation of

office or benefice, especially if they have the care of souls (**Canon 2359, § 3**).

TITLE XV

OF FORGERY AND OTHER FALSEHOODS

Forgery of Papal Documents

2215. All persons who forge or falsify letters, decrees or rescripts of the Apostolic See, or with full knowledge of the forgery make use of the letters, decrees or rescripts, automatically incur excommunication reserved in a special manner to the Apostolic See (**Canon 2360, § 1**).

Clerics who are guilty of the above-mentioned offense shall in addition be punished with other penalties, which may even extend to deprivation of benefice, office, dignity and ecclesiastical pension. Religious shall be deprived of all offices which they hold in the religious organization and of an active and passive vote, and are liable in addition to other penalties decreed by the constitutions of the respective organization (**Canon 2360**).

The law of the Code protects the official acts or documents not only of the Supreme Pontiff himself but also of the Sacred Congregations and the Tribunals and Offices of the Holy See against forgery and mutilation, and the wilful use of forged or mutilated documents of the Apostolic See. The Constitution "Apostolicæ Sedis" protected with penal sanctions the documents of the Supreme Pontiff only.

Fraud in Petition for Rescripts

2216. If, in the petition for a rescript addressed to the Apostolic See or to a local Ordinary, any person fraudulently or deceitfully withholds the truth or states a falsehood, he may be punished by his Ordinary in proportion to the gravity of guilt, without prejudice to the concession of Canons 45 and 1054 (**Canon 2361**).

Forgery of Ecclesiastical Documents and Records

2217. Persons who forge or falsify ecclesiastical letters or acts, either public or private, or make use of them with full

knowledge of the forgery, shall be punished in proportion to the gravity of guilt, without prejudice to the precepts of Canon 2406, § 1 (**Canon 2362**). Here are included all documents, records, reports, certificates, and other ecclesiastical instruments, public or private, issued by ecclesiastical authority. Under the name of private ecclesiastical acts or documents come, for example, deeds of purchase, sale of ecclesiastical property, documents of concession of privileges, favors, and dispensations, delivered to and possessed by private persons.

False Accusation of Solicitation Against Confessor

2218. If anyone, either in person or through others, falsely denounces a confessor to the superiors as guilty of solicitation, he automatically incurs excommunication reserved in a special manner to the Apostolic See. From this penalty he can in no case be absolved, until he has formally retracted the false denunciation and has, in so far as he is able, repaired the damages, if any were caused by his crime. Moreover, severe and lasting penances are to be imposed. The precept of Canon 894, which reserves the sin of false denunciation to the Apostolic See if perchance the censure of Canon 2363 was not incurred through ignorance or other excuse admitted in law, is not affected by this Canon (**Canon 2363**).

Because of the severe penalties visited on a confessor who abuses his office to solicit penitents to sin of impurity (cfr. Canons 904 and 2368), the Holy See sternly condemns the false accusation of a confessor to the ecclesiastical superiors (who, in this matter, are the Holy Office and the local Ordinaries); the *judices ecclesiastici* of Canon 894 (cfr. Volume I, n. 805) seem to be identical with the *superiores* of Canon 2363.[77] The absolution from the censure or the sin of false denunciation cannot be given, until the penitent has retracted the calumny against the confessor by a formal statement made either to the Holy Office or to the local Ordinary or to a priest delegated by either. In danger of death the penitent may indeed be absolved, but he must repair the calumny either by declaring before two witnesses that he falsely denounced the confessor or by a written state-

[77] Vermeersch-Creusen, "Epitome," III, n. 565. Cerato, "De Delicto Sollicitationis," n. 129, understands Canon 894 of strictly speaking judicial denunciation and Canon 2363 of non-judicial denunciation.

ment signed by him; if he were not willing to undo the harm caused by his calumny, he would not be in a proper disposition to receive absolution. Commentators discuss the question whether absolution can be given by an ordinary confessor in more urgent cases (cfr. Canon 2254) before the penitent has made a formal retraction of his calumny. It seems that, when the penitent has incurred the censure of Canon 2363, the concession of Canon 2254 may be applied, but the confessor who absolves must enforce the obligation of the penitent to make retraction. If the penitent has not incurred the censure by his false denunciation but only committed a sin reserved to the Holy See (cfr. Canon 894), Canon 900 may be applied, which states that every reservation of sins ceases in the cases mentioned there (cfr. Volume I, n. 813). Cerato [78] holds that Canon 900 applies to episcopal reserved sins only, because, he says, it is evident from the context and the subject matter of Canon 900 that it has reference to episcopal reserved sins only; other commentators [79] apply Canon 900 to all reserved sins without distinction, which seems justified by the wording of the law.

2219. Another question raised by commentators in connection with the reservation of false denunciation is whether ignorance excuses (1) from the censure, and (2) from the reservation of the sin. All agree that ignorance of the censure of Canon 2363 excuses from it, provided it is not crass or supine ignorance (cfr. Canon 2229, § 3, n. 1). Whether ignorance of the reservation of a sin excuses from the reservation is much disputed by canonists, both those who wrote before and those who wrote after the promulgation of the Code. Some authors call the reservation of the sin of false denunciation a medicinal penalty, and therefore apply to it the principle of Canon 2229, § 3, n. 1, that ignorance which is not crass or supine excuse from the penalty. The reason they give is that, in the Constitution "Sacramentum Pœnitentiæ," Pope Benedict XIV calls the reservation in question a penalty ordained by law for the purpose of discouraging the commission of the sin of false denunciation. Nevertheless, inasmuch as the Code calls it a restriction of the power of the confessor, not a penalty (cfr. Canon 893),

[78] *De Delicto Sollicitationis*, n. 131, and n. 4.

[79] Vermeersch-Creusen, "Epitome," II, n. 179; De Smet, "De absolutione complicis et sollicitatione," n. 137.

it is immaterial whether the penitent knows or does not know of the reservation, for it directly affects the power of absolution of the confessor.

TITLE XVI

OF OFFENSES COMMITTED IN THE ADMINISTRATION OR RECEPTION OF ORDERS AND OTHER SACRAMENTS

2220. The minister who dares to administer the Sacraments to persons who are forbidden either by the divine or the ecclesiastical law to receive them, shall be suspended from the administration of the Sacraments for a period of time to be prudently determined by the Ordinary, and punished with other penalties in proportion to the gravity of his guilt, without prejudice to the special penalties decreed by law for certain offenses of this kind (**Canon 2364**).

Attempt to Administer Confirmation

2221. A priest who, neither by law nor by concession of the Roman Pontiff, has the faculty to administer the Sacrament of Confirmation, and yet dares to administer this sacrament, shall be suspended. A priest who presumes to administer Confirmation beyond the limits of the faculty conceded to him, is automatically deprived of such faculty (**Canon 2365**). On the faculty to administer Confirmation given by law, cfr. Canons 239, § 1, n. 23 (Cardinals), and 782 (abbots and prelates *nullius,* vicars and prefects Apostolic).

Hearing of Confessions without Faculties

2222. A priest who presumes to hear sacramental confessions without the necessary jurisdiction is automatically suspended *a divinis;* he who presumes to absolve from reserved sins (without the necessary jurisdiction over those sins), is automatically suspended from the hearing of confessions (**Canon 2366**).

If the priest hears confessions when he has a positive and probable doubt (cfr. Canon 209) as to whether he has faculties, or whether they extend to a certain reserved case, he may hear confessions, or absolve from reserved sins, for the law supplies

jurisdiction; the same is to be said in the case of common error (cfr. Volume I, nn. 161–162). Since the penalties of Canon 2366 are not contracted by a priest unless he acts presumptuously, ignorance of the prohibition or the penalty (provided it be not affected ignorance) and all circumstances which impede full knowledge or deliberation excuse him from the penalties (cfr. Canon 2229, § 2). The penalties are not reserved: wherefore, if they have been incurred, every confessor can absolve from them.

Absolution of One's Accomplice in Sins of Impurity

2223. A priest who absolves or pretends to absolve his accomplice in a sin of impurity automatically incurs excommunication reserved in a most special manner to the Apostolic See. Even if the absolution is given in a case of danger of death, the priest becomes liable for the penalty, if another priest, though not approved for confessions, can hear the dying person's confession without occasioning grave infamy or scandal. If the dying person refuses to confess to another priest, the *sacerdos complex* may absolve his accomplice without incurring the excommunication (**Canon 2367**, § 1).

The same penalty is incurred by a priest who absolves or pretends to absolve his accomplice, who does not even confess the sin of complicity from which he (or she) has not yet been absolved for the reason that the *confessarius complex* has directly or indirectly induced the penitent to omit confessing the sin (**Canon 2367**, § 2).[79a]

The Code practically repeats the law of the Constitution "Apostolicæ Sedis," together with several declarations of the Holy See on the censure incurred by a priest who absolves or pretends to absolve his accomplice in a sin of impurity. Consequently, the commentaries of canonists and moralists on the Constitution "Apostolicæ Sedis" may be consulted for further details. The excommunication of this Constitution was specially reserved to the Holy See, and the Code reserves it in a most special manner. The first general law, which forbade under penalty of *ipso facto* excommunication the absolution of one's own accomplice, was enacted by Pope Benedict XIV in his Constitution "Sacramentum Pœnitentiæ." That document said

[79a] For declaration on indirect inducement, cfr. App. III, 92.

that the censure was incurred by the priest who dares or presumes to absolve. The Constitution "Apostolicæ Sedis" and the Code have dropped the terms dare or presume, wherefore crass and supine ignorance of the law or its penalty does not excuse from the censure, but ignorance which is not crass or supine does excuse (cfr. Canon 2229, § 3, n. 1). The crass or supine ignorance is caused by the grave and culpable negligence in acquiring due knowledge (cfr. Commentary, II, n. 2069).

2224. The priest who commits the crime of solicitation specified in Canon 904 shall be suspended from the celebration of Mass and from hearing sacramental confessions, and, if the gravity of his offense demands, shall be declared disqualified for the hearing of confessions. He shall also be deprived of all benefices and dignities, and of an active and passive vote, and be declared disqualified for all these, and in more serious cases he shall be punished with degradation (**Canon 2368,** § 1).

The faithful who knowingly neglect to denounce within one month a priest by whom they were solicited, as prescribed by Canon 904, automatically incur excommunication not reserved to anyone, but they may not be absolved until after they have satisfied their obligation, or have solemnly promised that they will satisfy it (**Canon 2368,** § 2).

The obligation to denounce the priest and the censure incurred by neglect of the denunciation are taken from the law of the Constitution "Apostolicæ Sedis" and the Constitution "Sacramentum Pœnitentiæ" of Pope Benedict XIV. Since the Code does not in any manner modify the former law, the commentaries of canonists and moralists on the said Constitutions may be consulted to ascertain the circumstances under which the penitent is obliged to denounce the priest who has solicited to a sin of impurity in connection with confession.

Violation of the Seal of Confession

2225. A confessor who presumes to violate directly the seal of confession, shall incur excommunication reserved in a most special manner to the Apostolic See; he who violates it indirectly only, shall be liable to the penalties of Canon 2368, § 1 (**Canon 2369,** § 1).

Whosoever rashly violates the precept of Canon 889,

shall be punished with a salutary penalty, even excommunication, in proportion to his guilt (**Canon 2369,** § 2).

The direct and indirect violation of the seal of confession is explained by all text-books of moral theology. Though the obligation to keep the secret extends to all persons who in any manner obtain knowledge of sacramental confession (e.g., persons standing near the confessional who hear what the penitent confesses), the penalty of excommunication for the violation of the secret of confession falls on the confessor only; other persons who violate the secret of confession, are in accordance with Canon 2369, § 2, to be punished by the Ordinary in proportion to their guilt. A penitent who divulges his own confession does not, of course, violate the secret of confession, for both the divine and the ecclesiastical law protect his confession as a private right; he may sacrifice that right if he so desires.

The censure of excommunication for the direct violation of the seal of confession is new in the Code, though the Church has always punished most severely any violations of the seal of confession.[80] The phrase "manet excommunicatio specialissimo modo Sedi Apostolicæ reservata" is unusual in denoting an excommunication which is incurred automatically. The verb "manet" does not necessarily indicate automatic excommunication, but the fact that the Code makes the censure reserved to the Apostolic See goes to show that automatic excommunication is meant, for, as Vermeersch-Creusen remark,[81] it is foreign to ecclesiastical court procedure to reserve penalties *ferendæ sententiæ* to the Holy See. The commentators on the Code almost unanimously teach that the excommunication is incurred automatically.

Consecration of Bishop without Papal Mandate

2226. A bishop who consecrates another bishop, the assistant bishops, or the priests who in place of the assistant bishops assist the consecrator, and the newly consecrated bishop who receives consecration without an Apostolic mandate in violation of the precept of Canon 953, are all automatically suspended

[80] *Decretales Gregorii IX,* c 12, *De pœnitentiis et remissionibus,* lib. V, tit. 38.

[81] *Epitome,* III, n. 408.

until the Apostolic See shall have relieved them from the penalty (**Canon 2370**).

The Sacred Congregation of the Council, December 15, 1657, declared that it was not sufficient that one has knowledge of the granting of the Apostolic mandate and of the fact that it has been mailed,[82] and Canon 53 speaking of rescripts generally rules that nobody may execute a rescript before he has received the document, and has examined into its authenticity and integrity, unless an official notice has been given in advance by the authority of the author of the rescript.

Simony in the Administration and Reception of the Sacraments

2227. All persons, including those of the episcopal dignity, who through simony knowingly promote a man or are promoted to orders, or who administer or receive other sacraments through simony, are suspected of heresy; clerics, moreover, incur suspension reserved to the Apostolic See (**Canon 2371**).

Canons 726–730 contain a definition of the nature of simony (cfr. Volume I, nn. 613–617); the crime of suspicion of heresy is defined in Canon 2315 (cfr, above, n. 2159). The administration and reception of first tonsure, minor and major orders, or any of the sacraments through simony, makes the administering bishop or priest and the recipient liable to the penalties *ferendæ sententiæ* of Canon 2315 (suspicion of heresy), and bishops and clerics automatically incur suspension reserved to the Apostolic See. In accordance with Canon 2227, bishops do not incur the *latæ sententiæ* penalties of suspension and interdict unless they are explicitly mentioned as in Canon 2371.

Reception of Orders from Unworthy Prelates

2228. All persons who presume to receive orders from a prelate who has been excommunicated, suspended or interdicted by a declaratory or condemnatory sentence, or from a notorious apostate, heretic or schismatic, automatically incur suspension *a divinis* reserved to the Apostolic See. Any person who has been ordained in good faith by such men, forfeits the right to

[82] Sole, "De Delictis et Pœnis," n. 428.

exercise the order thus received until he obtains a dispensation from the prohibition (**Canon 2372**).

The recipient of orders does not incur the suspension unless he has full knowledge of the excommunication, suspension or interdict which has been pronounced against the ordaining minister, or unless he is fully aware of the apostasy, heresy or schism of the minister. If the recipient of orders acted in good faith, he does not indeed incur a penalty, because no penalty is inflicted without guilt; but he incurs an impediment to the exercise of the order or orders which he received from the above-mentioned men. The impediment can be dispensed from by his own Ordinary, because the Code does not reserve the dispensation to the Holy See. The Constitution "Apostolicæ Sedis" prohibited the reception of orders from the above ministers under pain of suspension from the order received, and forbade the exercise of the orders received in good faith, until the recipients were dispensed from the impediment. Neither censure nor impediment was reserved to the Apostolic See by the Constitution. If a person who has been nominated bishop by the Apostolic See, or whose election, presentation, etc., has been confirmed by the Apostolic See, should have himself consecrated by any of the men mentioned in Canon 2372, he would not incur the penalty of that Canon, because by the Apostolic appointment he becomes a bishop, and bishops do not incur *ipso facto* penalties of suspension or interdict unless they are explicitly mentioned (cfr. Canon 2227, § 2).[83]

Illicit Conferring of Orders

2229. Suspension from the conferring of orders for one year reserved to the Apostolic See is automatically incurred:

(1) by one who, in violation of the precept of Canon 955, ordains a subject of another Ordinary without the dimissorial letters of his proper Ordinary;

(2) by one who, in violation of Canons 993, n. 4, and 994, ordains his own subject who has lived elsewhere for such a length of time that he could have contracted there a canonical impediment (i.e., without obtaining the testimonial letters from the local Ordinary of such place or places);

[83] Eichmann, "Das Strafrecht," 208.

(3) by one who, in violation of the precept of Canon 974, n. 7, ordains a man to major orders without a canonical title;

(4) by one who ordains a religious belonging to a religious house outside the territory of the ordaining prelate, even though the candidate presents dimissorial letters of his own proper superior, unless it has been legitimately proved that there is one of the reasons mentioned in Canon 966 for which the religious superior may present his subjects to other than the bishop of the place where the religious house in which the candidate resides is located; if a religious organization has a privilege in virtue of which the superiors are free to send their candidates to any bishop, such privilege remains intact (**Canon 2373**). For explanation of the various points of Canon 2373, cfr. the Canons here referred to.

Illicit Reception of Orders

2230. A man who maliciously presents himself for ordination without dimissorial letters or with forged letters, or before he has attained the canonical age, or for ordination *per saltum* (i.e., without having received the previous order or orders; e.g., for subdeaconship without having received all of the minor orders), is automatically suspended from the order unlawfully received. A man who presents himself for ordination without the testimonial letters or when he is under a censure, irregularity or other impediment, shall be chastized with severe penalties according to the circumstances of the case (**Canon 2374**).

On dimissorial letters, cfr. Canons 955, 958–963, 964; on the canonical age, Canons 974–975; on receiving the various orders in proper succession, Canon 977; on the requisite testimonial letters, Canons 993–1001. If the candidate has incurred a censure by an occult offense, he is not forbidden to present himself for ordination, if by staying away from the ordination he would betray his offense (cfr. Canon 2232). The same may be said of an irregularity incurred by an occult offense, for, though an irregularity from crime is not a penalty properly so called, it is nevertheless inflicted after the manner of a penalty.[84]

[84] Vermeersch-Creusen, "Epitome," III, n. 426.

Mixed Marriage without Dispensation

2231. Catholics who dare to contract a mixed marriage, though validly, without a dispensation of the Church, are automatically deprived of the right to exercise legal ecclesiastical acts and to receive the sacramentals, until they have obtained a dispensation from the penalties from the Ordinary (**Canon 2375**).

A marriage of a Catholic with a baptized non-Catholic, if contracted without the presence of an authorized priest, is ordinarily invalid (cfr. Canon 1094), with the exception of the cases described in Canons 1098–1099. If a Catholic and a baptized non-Catholic deceive the priest by representing themselves as Catholics, and are married by a duly authorized priest, the marriage without dispensation from the impediment of mixed religion is valid, but the Catholic who knew of the prohibition of mixed marriages and the penalties for neglecting to obtain the dispensation becomes liable to the punishments of Canon 2375, from which the Ordinary can release him. It need not be stated that the promises which the Church demands in marriages with non-Catholics, baptized or unbaptized, have to be made by the parties before the Catholic can be absolved from the grievous violation of the law of the Church. If the non-Catholic party absolutely refuses to make the promises, but the Catholic is sincerely repentant and promises to do all in his power to raise the children as Catholics, the Ordinary can allow the Catholic to receive the Sacraments.[85]

TITLE XVII

OF OFFENSES AGAINST THE OBLIGATIONS PROPER TO THE CLERICAL AND RELIGIOUS STATES

2232. Priests who have neither been dispensed by the Ordinary nor are legitimately impeded from making the examination spoken of in Canon 130 (yearly examination for three years after ordination to the priesthood), and who refuse to submit to the examination, shall be forced to do so by the Ordinary with appropriate penalties (**Canon 2376**).

[85] Sole, "De Delictis et Pœnis," n. 436.

Absence from the Diocesan Conferences of Priests

2233. Priests who, in violation of the precept of Canon 131, stubbornly refuse to attend the conferences, shall be punished at the discretion of the Ordinary; if they are religious who have the faculties of the diocese, but do not have the care of souls (as pastors or in positions held equivalent in law to the pastorate), the Ordinary shall suspend them from hearing the confessions of seculars (**Canon 2377**).

On the diocesan conferences of priests, cfr. Canon 131 (Volume I, n. 100). In discussing that Canon we had expressed the opinion followed by some canonists that the assistants of the religious pastor also come under the heading of those who have the care of souls (*curam animarum habentes*). It seems, however, that those priests only are meant by that phrase who have the care of souls in the official capacity of a pastor or of men held equivalent in law to pastors (cfr. Canon 451).[86] Stubborn refusal (*contumaces*) implies that a canonical admonition (cfr. Canon 2309) to appear at the conference has preceded.

Carelessness in the Performance of Rites and Ceremonies

2234. Clerics in major orders who gravely neglect the rites and ceremonies prescribed by the Church in the sacred ministry, and who despite admonition do not amend, shall be suspended in proportion to the gravity of guilt in the individual cases (**Canon 2378**).

The dignity of the public cult offered to God by the Church through her ministers demands a faithful and devout performance of the sacred rites and ceremonies. Consequently, the Church strictly forbids her ministers to introduce into the public worship prayers and ceremonies of their own, and demands rigid adherence to the prescribed prayers and ceremonies. All arbitrary modification of the prescribed rites is condemned by the Church as an abuse, and the Ordinaries have the duty of stopping such abuses. The more frequent and the more important such arbitrary deviations from the prescribed rites and ceremonies are, the more serious is the offense.

[86] Fanfani, "De iure religiosorum" (ed. 1925), n. 453; Vermeersch-Creusen, "Epitome," I, n. 203, III, n. 581.

Discarding the Clerical Garb

2235. Clerics who, in violation of the precept of Canon 136, do not wear the clerical garb and tonsure, shall be severely admonished. If they have not obeyed within a month from receiving the admonition, clerics in minor orders automatically cease to be clerics in accordance with Canon 136. Clerics in major orders, besides forfeiting *ipso facto* and without the need of any declaration every office which they hold (cfr. Canon 188, n. 7), shall be suspended from the orders which they have received: if they openly enter upon a course of life incompatible with the clerical state, they shall be given a second admonition, and, if they spurn this warning, shall after the lapse of three months from the second admonition be deposed (**Canon 2379**).

Clerics Engaging in Worldly Business Enterprises Forbidden to the Clergy

2236. Clerics or religious who either in person or through others engage in trading and business in violation of the precept of Canon 142, shall be punished by the Ordinary with appropriate penalties in proportion to the gravity of their guilt (**Canon 2380**). For explanation of trading and business forbidden to clerics, cfr. Canon 142 (Volume I, n. 113). The penalties of the former law [87] against missionaries engaging in secular business or trade have been dropped by the Code.

Violation of the Law of Residence

2237. All who hold an office, benefice, or dignity, to which the obligation of residence is attached, and who absent themselves unlawfully, incur the following penalties:

(1) they are automatically deprived of all the fruits or revenue of their benefice or office in proportion to the time of illegitimate absence, and they must give that part of the income to the Ordinary, who shall devote it to some church, or pious institute, or the poor;

[87] Sacred Congregation of the Propaganda, March 29, 1873 (*Collect. de Prop, Fide*, II, n. 1398).

(2) they shall be deprived of the office, benefice, dignity, in accordance with Canons 2168–2175 (**Canon 2381**).

The obligation of residence binds Cardinals (Canon 238), local Ordinaries (bishops, Canon 338; Apostolic vicars and prefects, Canon 301; administrators Apostolic, Canon 315; prelates *nullius,* Canon 323), coadjutors of bishops (Canon 354), vicars-capitular (Canon 440), canons (Canon 418), vicars-forane or deans (Canon 448), pastors (Canon 465), priests who take the place of the pastor (Canons 471–475), assistants of a pastor (Canon 476). Canon 2381 states that all who illegitimately absent themselves lose right and title to the income or salary (i.e., to the portion which corresponds to the time of absence), and must give it to the Ordinary to be devoted to the purposes specified in the Canon. If the Ordinary violates the law of residence by absenting himself for six months without legitimate excuse, the archbishop of the respective ecclesiastical province is obliged to denounce him to the Apostolic See (cfr. Canon 338). Some commentators maintain that a cleric who has violated the law of residence need not forward to the bishop the portion of the income of his office or benefice which he has forfeited by his offense, but may himself devote it to the poor or some charitable institute, if he would defame himself by forwarding the money to the Ordinary.[88] It may, perhaps, be admitted that, if the Ordinary does not know of the violation, the priest is not obliged to confess his unlawful absence (cfr. Canon 2232), but may dispose of the income which he cannot appropriate as Canon 2381 directs. However, the fact of his illegitimate absence can be easily ascertained by the Ordinary, and, if he does discover it and orders him to surrender the income in proportion to his absence, the priest cannot plead satisfaction of his obligation made by himself, for the bishop can insist on satisfaction being made in the manner appointed by the Code. The manner of procedure against clerics violating the obligation of residence is outlined in Canons 2168–2175.

Negligence of Pastor in the Care of Souls

2238. If a pastor gravely neglects the administration of the sacraments, care of the sick, instruction of the children and the

[88] Vermeersch-Creusen, "Epitome," III, n. 585.

people, preaching on Sundays and other holydays of obligation, or the custody of the parochial church, the Blessed Sacrament and the holy oils, the Ordinary shall proceed against him in the manner specified in Canons 2182–2185 (**Canon 2382**).

Carelessness of Pastor in Keeping the Parochial Records

2239. A pastor who does not keep or preserve the parochial records diligently, as prescribed by law, shall be punished by his proper Ordinary in proportion to the gravity of his guilt (**Canon 2383**).

Canon 470 demands that the pastor keep the records of the baptisms, confirmations, marriages and deaths, and the census records (cfr. Volume I, n. 348).

Negligence in Office of the Canon Theologian and Canon Penitentiary

2240. The canon theologian and canon penitentiary who are neglectful in their attendance to the duties of their office shall be compelled to do their duty by proceeding against them gradually with admonitions, threats of penalties, and deprivation of part of their salaries which is to be assigned to those who do the work in their place. If they have persisted in their neglect for a whole year, the Ordinary shall after previous admonition punish them with suspension from their benefice; if they continue in their neglect for six more months, he shall deprive them of the benefice itself (**Canon 2384**).

Apostasy from Religious Life

2241. Without prejudice to the precepts of Canon 646, a religious who apostatizes from the religious organization automatically incurs excommunication reserved to his proper major superior, or, if the religious organization is a laical community or non-exempt, to the local Ordinary of the place where the apostate religious stays; he is also deprived of the right to legal ecclesiastical acts and all the privileges of his organization. When he returns, he is for ever deprived of an active and passive vote, and shall moreover be punished with other penalties by his superiors in proportion to the gravity of his guilt in

accordance with the constitutions of the respective organization (**Canon 2385**).

Canon 646 enumerates certain cases of apostasy by which the religious is automatically considered dismissed. Canon 644 authoritatively defines apostasy from religious life (cfr. Volume I, nn. 561–562).

Flight from Religious Life

2242. A religious who deserts the religious house without the permission of his superiors with the intention of returning is called a fugitive in law. He automatically incurs deprivation of any office he holds in the religious organization, and, if he is a cleric in major orders, incurs suspension reserved to his proper major superior. When he returns, he shall be punished in the manner indicated by the constitutions of the respective organization, and, if the constitutions do not provide for such a case, the major superior shall inflict penalties (at his discretion) in proportion to the gravity of his guilt (**Canon 2386**).

Canon 644 defines who is meant by "fugitivus" (cfr. Volume I, n. 563). As to the reservation of the suspension, Canon 2386 merely states that, when the fugitive is a cleric in major orders, the suspension is reserved to his major superior, but it does not specify (as is done in Canon 2385) that the major superior of clerical exempt organizations is meant. Wherefore, Vermeersch-Creusen seem justified in the inference that the major superiors of all clerical religious organizations are meant in Canon 2386.[89]

Religious Profession by Deceit

2243. A religious cleric whose profession has been declared null and void for reason of fraud or deceit shall, if he is in minor orders, be expelled from the clerical state; if he is in major orders, he is automatically suspended until the Apostolic See shall see fit to release him from the penalty (**Canon 2387**).

Canon 572, n. 4, rules that the profession to which a religious obtains admission through deceit is invalid (cfr. Volume I, n. 478). The deceit must be in reference to a serious matter, which is of such a nature that the organization would not have

[89] *Epitome*, III, n. 590.

admitted the religious to profession if it had been acquainted with it.

Members of communities living after the manner of religious but without vows, are not religious in the legal meaning of the term. Nevertheless, the Committee for the Authentic Interpretation of the Code declared that the members of all clerical communities are subject to the precepts of Canons 2386 and 2387.[90]

Violation of the Obligation of Celibacy

2244. Clerics in major orders and regulars or nuns who have made the solemn vow of chastity, and all persons who presume to contract marriage, even by mere civil ceremony, with the aforesaid clerics, regulars and nuns, automatically incur excommunication reserved simply to the Apostolic See. Moreover, clerics who have been admonished by the Ordinary and do not repent within the time specified by the Ordinary according to the circumstances of the case, shall be degraded. Here also applies the rule of Canon 188, n. 5, in virtue of which clerics automatically forfeit every office which they hold (**Canon 2388,** § 1).

If religious in perpetual simple vows in religious orders or congregations presume to contract marriage, they and the persons who marry them automatically incur excommunication reserved to the Ordinary (**Canon 2388,** § 2).

In the Constitution "Apostolicæ Sedis," the attempted marriage of clerics in major orders and of religious men and women in solemn vows was punished with excommunication reserved to the Ordinary; their partners in the attempted marriage were also liable to the excommunication. The excommunication of the Code against religious in perpetual simple vows and their partners is new.[90a]

Commentators on the Constitution "Apostolicæ Sedis" and on the Code debate whether the parties incur the excommunication, if one of them or both give fictitious consent. It seems reasonable to say that, if true consent is absent and the lack of it can be proved in the external forum, the parties do not incur the excommunication, for, without a consent which would be naturally sufficient for a valid marriage, there is no real

[90] June 2–3, 1918 (*Acta Ap. Sedis,* X, 347).
[90a] For absolution from censure, cfr. App. III, 93.

attempt of marriage.[91] If an attempted marriage of a cleric in major orders or of a solemnly professed religious is invalid, not only for reason of the diriment impediment of sacred orders or solemn religious profession, but also for reason of some other impediment (e.g., consanguinity, affinity, etc.), the parties do not escape the excommunication as has been declared by the Holy Office.[92]

The excommunication is incurred only when the above offense is committed with full knowledge of the law, so that even crass and supine ignorance excuses, and also grave fear or any other circumstance (e.g., intoxication), which interferes with full knowledge and deliberation.

Violations of Community Life in Religious Organizations

2245. Religious who violate the law of community life prescribed by their constitutions in a notable matter shall be seriously admonished: if they do not amend, they shall be punished even with deprivation of an active and passive vote, and, if they are superiors, also with deprivation of office (**Canon 2389**).

The law of the Church for religious demands that all religious follow the community life, even in what pertains to food, clothes and furniture (cfr. Canon 594). The constitutions of each organization determine the particulars of the common life. The Committee for the Authentic Interpretation of the Code declared that Canon 2389 applies also to clerical communities without vows, who live after the manner of religious.[93]

TITLE XVIII

OF OFFENSES IN THE CONFERRING OR RECEPTION OF, AND DISMISSAL FROM ECCLESIASTICAL DIGNITIES, OFFICES AND BENEFICES

2246. Persons who in any manner, either in person or through others, interfere with the liberty of ecclesiastical elections, or who after the completion of the canonical election in

[91] Sole, "De Delictis et Pœnis," n. 448; Vermeersch-Creusen, "Epitome," III, n. 592; Cerato, "Censuræ Vigentes" (2nd ed.), n. 64.
[92] January 13, 1892 (*Collect. de P. F.*, II, n. 1777).
[93] January 2–3, 1918 (*Acta Ap. Sedis*, X, 347).

any manner molest the voters or the person elected, shall be punished in proportion to their guilt (**Canon 2390,** § 1).

If lay persons or the secular authorities unlawfully and in violation of canonical liberty presume to interfere in elections conducted by a college of clerics or religious, the electors who solicited or freely admitted such interference are automatically deprived of the right to vote in that particular election; persons who knowingly assented to being elected in that manner are automatically rendered disqualified for the office or benefice in question (**Canon 2390,** § 2).

All elections, with the exception of the election of the Supreme Pontiff (cfr. Canon 2330), are subject to Canon 2390. Canon 166 rules that, if lay persons interfere in any manner with the freedom of election, the election is *ipso facto* invalid.

Offenses Committed in Elections

2247. A college which knowingly elects an unworthy person is automatically deprived for that particular election of the right to hold a new election (**Canon 2391,** § 1).

Individual electors who knowingly failed to observe the essential form of election may be punished by the Ordinary in proportion to their guilt (**Canon 2391,** § 2).

The term "unworthy" is not the same as the *non-idonea persona,* who cannot be elected because an impediment of either the common or the particular law prevents his election. Canon 179 provides that, if the electors believe that a certain person who is under some impediment from which a dispensation can be and is usually granted, they can by their votes postulate him. An unworthy person is (e.g.) an excommunicated, suspended, or interdicted person, or one who has been punished with deprivation of a passive vote, a person branded with infamy of law or fact, a notorious apostate, heretic, schismatic, or public sinner. In accordance with the precept of Canon 178, the superior who has the right to confirm the election obtains the right to appoint a person to the office, if the college of electors is penalized by deprivation of the right to elect.

If, in countries where clerics or laymen have the right to present or nominate a person for a certain office, they knowingly present or nominate an unworthy person, they forfeit in

that one instance the right of nomination or presentation. If they present or nominate a *persona non-idoenea* (cfr. preceding paragraph on the meaning of the term), they may present another person provided the time for presentation has not yet expired (cfr. Canon 1465).

Simony in the Conferring and Accepting of Ecclesiastical Offices, Benefices, Dignities

2248. Without prejudice to the precept of Canon 729 (which decrees invalidity of the appointment to offices, benefices, dignities), persons who commit simony in any ecclesiastical office, benefice, or dignity incur the following penalties:

(1) they automatically incur excommunication reserved simply to the Apostolic See;

(2) they are automatically deprived for ever of any right they may have had to elect, present, or nominate;

(3) if they are clerics, they shall in addition be suspended (**Canon 2392**).

Since Canon 2392 states that all persons guilty of simony incur the above penalties, it seems certain that simony of both the divine and the ecclesiastical law (cfr. Canon 727) is meant. Some commentators on the Code, relying on the former laws concerning simony, hold that only simony of the divine law is meant in Canon 2392. However, where the Code does not distinguish, we may not infer a distinction.

Abuse of the Right of Election, Presentation, or Nomination

2249. All persons who legitimately enjoy the right to elect, present or nominate, and who show disregard for the authority of the person to whom pertains the right of confirmation or institution by presuming to confer the office, benefice or dignity, are automatically deprived for that particular instance of their right of election, or presentation or nomination (**Canon 2393**).

Illicit Occupation of Benefices, Offices or Dignities

2250. If a person by his own authority takes possession of an ecclesiastical benefice, office or dignity, or if after his election,

presentation or nomination to such office, he takes possession of or interferes in the government or administration of the same before he has received the necessary letters of confirmation or institution and has exhibited them to the persons designated by law, he incurs the following penalties:

(1) he becomes automatically disqualified for the benefice, office or dignity, and shall moreover be punished by the Ordinary in proportion to his guilt;

(2) he shall be forced to abandon at once after previous warning the possession of the benefice, office or dignity and his interference in the government and administration, by suspension from or deprivation of any benefice, office or dignity which he had previously obtained, and even by deposition, if the gravity of the offense calls for it;

(3) chapters, convents and all others concerned who admit a person elected, presented or nominated before they have exhibited the letters of confirmation or appointment by the competent superior, are automatically suspended from the right to elect, nominate or present until the Apostolic See pleases to release them from the suspension (**Canon 2394**).

Acceptance of Non-Vacant Benefice, Office, or Dignity

2251. A person who knowingly accepts appointment to an office, benefice or dignity which is not legally vacant, and allows himself to be put in possession of the same, becomes automatically disqualified from obtaining it afterwards, and he shall be punished with other penalties in proportion to his guilt (**Canon 2395**).

Canon 150 rules that the appointment to an office which is not legally vacant is automatically null and void; if the office, benefice, or dignity, is legally vacant, but is actually in possession of another person, the appointment cannot be made until a legitimate declaration has been issued concerning the invalid possession of the actual occupant (cfr. Canon 151).

Illegal Possession of Two Incompatible Offices or Benefices

2252. A cleric who has obtained peaceful possession of an office or benefice which is incompatible with his former office

or benefice, and who nevertheless, in violation of Canons 156 and 1439, presumes to retain both, is automatically deprived of both (**Canon 2396**).

Canon 156 rules that two offices are incompatible if both cannot be attended to by the same person at the same time, and Canon 1439 states that two benefices are incompatible, not only when the beneficiary cannot in person comply with all the duties attached to both benefices at the same time, but also when each of the two benefices suffices for the decent maintenance of a cleric.

Refusal of Cardinals to Take the Prescribed Oath

2253. If a person, on promotion to the dignity of a Cardinal, refuses to take the oath spoken of in Canon 234, he is automatically deprived for ever of the cardinalitial dignity (**Canon 2397**).

Neglect of Bishop-Elect to Receive Consecration in Due Time

2254. If, on his promotion to the episcopal dignity, anyone neglects, in violation of the precept of Canon 333, to receive within three months the episcopal consecration, he forfeits automatically the income of his office, which revenue is to be applied to the cathedral church; if he neglects to receive the consecration for another three months, he is automatically deprived of the episcopate (**Canon 2398**).

Unlawful Desertion of Duties by Clerics

2255. Clerics in major orders who presume to abandon the office which has been entrusted to them by their proper Ordinary without his permission, shall be suspended *a divinis* for a period of time to be determined by the Ordinary according to the various cases—i.e., for a longer or shorter period of time in proportion to the gravity of guilt (**Canon 2399**).

Resignation of Office, Benefice or Dignity into the Hands of Laymen

2256. A cleric who presumes to resign an ecclesiastical office, benefice or dignity into the hands of laymen automatically incurs suspension *a divinis* (**Canon 2400**).

Since the appointment to ecclesiastical offices, benefices or dignities can be made only by the competent ecclesiastical superior (cfr. Canon 147), resignation of the same can be made only to the ecclesiastical superior (cfr. Canon 187), and the resignation does not become effective unless it is accepted by the competent superior (cfr. Canon 190).

Illegal Refusal to Abandon Possession of Office, Benefice or Dignity

2257. If anyone persists in the possession of an office, benefice or dignity notwithstanding legitimate deprivation or removal, or if he for the purpose of retaining possession unlawfully delays to withdraw, he shall after previous warning be forced to abandon such office by suspension *a divinis* or other penalties, and even by deposition, if the case calls for it (**Canon 2401**).

Against deprivation from a removable office, recourse to the Holy See *in devolutivo* is permitted (cfr. Canon 192). The same recourse is permitted in the removal of irremovable pastors (cfr. Canon 2146). The removed pastors must leave the parish, for the recourse does not suspend the decree of the bishop.

Neglect to Obtain the Abbatial Blessing

2258. An abbot or prelate *nullius* who, in violation of the precept of Canon 322, does not obtain the abbatial blessing, is automatically suspended from jurisdiction (**Canon 2402**).

Canon 319 explains who are abbots or prelates *nullius*. Canon 322 obliges abbots and prelates *nullius* to receive the blessing within three months from their appointment, if they are obliged to receive that blessing either by precept of the Apostolic See or by the constitutions of their own order. The suspension is not reserved, so that they can be absolved from it by any con-

fessor, provided they cease from their wilful neglect to obtain the blessing.

Neglect to Make Prescribed Profession of Faith

2259. A person who, in violation of Canon 1406, neglects without a legitimate impediment or excuse to make the profession of faith, shall be admonished to do so within a specified period of time; if he stubbornly persists in his refusal beyond the term fixed, he shall be punished even with deprivation of office, benefice, dignity, or position, and forfeits the revenue of his benefice, office, dignity, position, while he refuses to make the profession of faith (**Canon 2403**). With reference to the persons obliged to make the profession of faith, cfr. Canon 1406 (above, nn. 1421–1422).

TITLE XIX

OF THE ABUSE OF ECCLESIASTICAL AUTHORITY OR OFFICE

2260. The abuse of ecclesiastical authority shall be punished at the discretion of the legitimate superior in proportion to the gravity of guilt, without prejudice to the precepts of the Canons which decree a specific penalty for certain abuses (**Canon 2404**).

Wrongs Committed in Reference to Diocesan Archives

2261. If the vicar-capitular or any other person, whether of the Chapter or an outsider, takes away, destroys, hides or substantially alters in person or through others any document pertaining to the episcopal Curia, he automatically incurs excommunication simply reserved to the Apostolic See, and may be punished by the Ordinary even with deprivation of office or benefice (**Canon 2405**).

While the bishop is in charge of the diocese, he watches over the diocesan archives, and, if anyone without proper authority interferes with the documents kept there, he can proceed against him. During the vacancy of the bishopric, when the diocese is

governed by the vicar-capitular or (in countries where there are no Chapters of Canons) the administrator, the Code protects the episcopal archives under the above penalty. On diocesan archives during the vacancy of the bishopric, cfr. Canon 435 (Volume I, n. 317).

Unfaithfulness in the Custody of Ecclesiastical Records

2262. Any person who is bound by his office to draft, write or preserve acts or documents or books pertaining to ecclesiastical Curias or parochial books, and who presumes to falsify, mutilate, destroy or hide them, shall be deprived of his office, or shall be punished with other grave penalties by the Ordinary in proportion to his guilt (**Canon 2406,** § 1).

Persons who are in charge of the records or books and who maliciously refuse when legitimately requested to transcribe, transmit, or exhibit the acts, documents or books, or who in any other way abuse their office, may be punished with deprivation of or suspension from office, and with fines at the discretion of the Ordinary and in proportion to the gravity of guilt in the various cases (**Canon 2406,** § 2).

Attempted Bribery of Officials of the Curia

2263. A person who attempts to induce to action or omission contrary to their office any of the ecclesiastical officials or assistants of a Curia, or judges, attorneys or procurators by gifts or promises, shall be punished with appropriate penalties and be forced to repair any damages that may have been caused by his bribery (**Canon 2407**).

Mere attempted bribery is here made an offense, so that the Ordinary is obliged to punish such attempt, even though the person did not succeed in inducing the above-mentioned persons to violate the duties of their office or position. The judge and other officials of the ecclesiastical court, who fail to do their duty conscientiously, are to be punished by the local Ordinary (cfr. Canon 1625), and the same is true of attorneys and procurators (cfr. Canon 1666).

Illegal Exaction of Taxes

2264. Persons who increase or exact more than the customary taxes, legitimately approved in accordance with Canon 1507, shall be restrained by a heavy monetary fine, and, if they fail again, shall be suspended or removed from office in proportion to the gravity of their guilt, without prejudice to their obligation of making restitution of the money unjustly acquired (**Canon 2408**).

Unlawful Issuance of Dimissorials During Vacancy of Bishopric

2265. If the vicar-capitular issues dimissorial letters for ordination in violation of the precept of Canon 958, n. 3, he automatically incurs suspension *a divinis* (**Canon 2409**).

The vicar-capitular (or the administrator of a diocese) is not allowed to grant dimissorials for ordination to the subjects of the diocese, except under the circumstances mentioned in Canon 958. The suspension of Canon 2409 is not reserved.

Illicit Ordination of Exempt Religious

2266. Religious superiors who, in violation of the precepts of Canons 965–967, presume to send their subjects to another bishop for ordination, are automatically suspended for one month from the celebration of Mass (**Canon 2410**).

Unless an exempt religious organization has a special privilege, its religious subjects cannot be sent to any other bishop for ordination than the Ordinary of the place where the religious candidates are properly domiciled. Exceptions are stated in Canon 966. The penalty is of a vindicative nature, and cannot be remitted by an authority inferior to the Holy See; it ceases when the superior has expiated it by abstaining from the saying of Mass for a month (cfr. Canon 2289). The Committee for the Authentic Interpretation of the Code declared that clerical organizations without vows, living after the manner of religious, are also subject to Canon 2410, if the societies enjoy

the privilege of issuing dimissorials for ordination to their subjects.[94]

Unlawful Admission to the Novitiate or to Religious Profession

2267. Religious superiors who violate the precept of Canon 542 by receiving into the novitiate a candidate who is not qualified, or who violate Canon 544 by receiving a candidate without the required testimonial letters, or who violate Canon 571 in admitting candidates to profession, shall be punished in proportion to the gravity of guilt, even with deprivation of office (**Canon 2411**). The Committee for the Authentic Interpretation of the Code declared on June 2–3, 1918, that the first part of Canon 2411 (in reference to the reception into the novitiate) applies also to clerical communities without vows.

Failure to Keep Dowry Intact and Neglect to Notify Local Ordinary of Reception or Profession in Religious Communities of Women

2268. The superioresses of all religious women, even of exempt organizations, shall be punished by the local Ordinary in proportion to the gravity of their guilt, even with deprivation of office:

(1) if, in violation of the precept of Canon 549, they presume to expend in any manner the dowries of the young women who have been received into the community, without prejudice to the obligation of Canon 551;

(2) if, in violation of the precept of Canon 552, they omit to inform the local Ordinary of the impending admission of a subject to the novitiate or to profession (**Canon 2412**).

Interference of Religious Superiors with the Visitation

2269. Superioresses who after the visitation has been announced transfer religious to another house without the consent of the Visitor, and all religious, whether superioresses or sub-

[94] June 2–3, 1918 (*Acta Ap. Sedis*, X, 347).

jects, who personally or through others, directly or indirectly, induce the religious to remain silent when questioned by the Visitor, or to conceal the truth in any manner, or not to answer with sincerity, or who under any pretext molest the Sisters because of the answers they have given to the Visitor, shall be declared by the Visitor disqualified for the obtaining of all offices which entail government over others, and the superioresses shall be deprived of the office which they hold (**Canon 2413,** § 1).

The precepts of the preceding paragraph apply also to religious organizations of men (**Canon 2413,** § 2).

By precept of Canon 511 the major superiors of religious organizations on whom the duty of making the visitation is imposed by their constitutions must visit all the houses subject to them within the time specified by the constitutions. In virtue of Canon 512, the local Ordinaries are obliged to visit every five years all the convents of Sisters in solemn vows and all houses of diocesan congregations of men or women. The duties of the Visitor (whether the major superior or the Ordinary) are pointed out in Canon 513: the religious are strictly commanded to answer the questions of the Visitor truthfully, and the superiors are forbidden to dissuade their subjects from satisfying their obligation or to interfere in any manner with the purpose of the visitation. The local Ordinaries can visit the houses only which are within the territory of their jurisdiction. If a diocesan congregation has houses in various dioceses, each bishop is in virtue of Canon 512 the appointed Visitor for the houses in his own diocese. After the bishop has announced his visitation the superioresses may not transfer a Sister to another house to prevent her meeting the Visitor. The Committee for the Authentic Interpretation of the Code declared on June 2–3, 1918, that Canon 2413 applies also to clerical organizations without vows in which the members live after the manner of religious.[95]

Interference by Superioresses with the Liberty of Conscience of their Subjects

2270. Any superioress who has violated the precepts of Canons 521, 522, 523, shall be admonished by the local

[95] *Acta Ap. Sedis,* X, 347.

Ordinary. If she fails again in this matter, she shall be punished by him with deprivation of office, and the Ordinary shall at once inform the Sacred Congregation of the Religious concerning the matter (**Canon 2414**).

The Canons referred to guarantee to religious women liberty of conscience and forbid the superioresses to interfere in matters pertaining to confession (cfr. Volume I, nn. 402–404).

A. M. D. G.

PROFESSIO CATHOLICAE FIDEI

Ego *N.* firma fide credo et profiteor omnia et singula, quae continentur in symbolo Fidei, quo sancta Romana Ecclesia utitur, videlicet: Credo in unum Deum, Patrem omnipotentem, factorem caeli et terrae, visibilium omnium et invisibilium. Et in unum Dominum Iesum Christum, Filium Dei Unigenitum. Et ex Patre natum, ante omnia saecula. Deum de Deo, lumen de lumine, Deum verum de Deo vero. Genitum non factum, consubstantialem Patri: per quem omnia facta sunt. Qui propter nos homines, et propter nostram salutem descendit de caelis. Et incarnatus est de Spiritu Sancto ex Maria Virgine, et Homo factus est. Crucifixus etiam pro nobis, sub Pontio Pilato: passus, et sepultus est. Et resurrexit tertia die, secundum Scripturas. Et ascendit in caelum: sedet ad dexteram Patris. Et iterum venturus est cum gloria iudicare vivos, et mortuos: cuius regni non erit finis. Et in Spiritum Sanctum, Dominum et vivificantem: qui ex Patre Filioque procedit. Qui cum Patre et Filio simul adoratur, et conglorificatur: qui locutus est per prophetas. Et Unam, Sanctam, Catholicam et Apostolicam Ecclesiam. Confiteor unum Baptisma in remissionem peccatorum. Et exspecto resurrectionem mortuorum. Et vitam venturi saeculi. Amen.

Apostolicas et ecclesiasticas traditiones, reliquasque eiusdem Ecclesiae observationes et constitutiones firmissime admitto et amplector. Item sacram Scripturam iuxta eum sensum, quem tenuit et tenet sancta Mater Ecclesia, cuius est iudicare de vero sensu et interpretatione sacrarum Scripturarum, admitto; nec eam unquam, nisi iuxta unanimem consensum Patrum, accipiam et interpretabor.

Profiteor quoque septem esse vere et proprie Sacramenta novae legis a Iesu Christo Domino nostro instituta, atque ad salutem humani generis, licet non omnia singulis, necessaria, scilicet, Baptismum, Confirmationem, Eucharistiam, Poenitentiam, Extremam Unctionem, Ordinem et Matrimonium; illaque

gratiam conferre, et ex his Baptismum, Confirmationem et Ordinem sine sacrilegio reiterari non posse. - Receptos quoque et approbatos Ecclesiae Catholicae ritus in supradictorum omnium Sacramentorum sollemni administratione recipio et admitto. - Omnia et singula quae de peccato originali et de iustificatione in sacrosancta Tridentina Synodo definita et declarata fuerunt, amplector et recipio. - Profiteor pariter in Missa offerri Deo verum, proprium et propitiatorium Sacrificium pro vivis et defunctis; atque in sanctissimo Eucharistiae Sacramento esse vere, realiter et substantialiter Corpus et Sanguinem una cum anima et divinitate Domini nostri Iesu Christi, fierique conversionem totius substantiae panis in Corpus, et totius substantiae vini in Sanguinem, quam conversionem Catholica Ecclesia Transsubstantiationem appellat. Fateor etiam sub altera tantum specie totum atque integrum Christum, verumque Sacramentum sumi. - Constanter teneo Purgatorium esse, animasque ibi detentas fidelium suffragiis iuvari. Similiter et Sanctos una cum Christo regnantes venerandos atque invocandos esse, eosque orationes Deo pro nobis offerre, atque eorum Reliquias esse venerandas. Firmiter assero imagines Christi ac Deiparae semper Virginis, necnon aliorum Sanctorum habendas et retinendas esse, atque eis debitum honorem ac venerationem impertiendam. - Indulgentiarum etiam potestatem a Christo in Ecclesia relictam fuisse, illarumque usum Christiano populo maxime salutarem esse affirmo. - Sanctam, Catholicam et Apostolicam Romanam Ecclesiam, omnium Ecclesiarum matrem et magistram agnosco, Romanoque Pontifici beati Petri Apostolorum Principis successori ac Iesu Christi Vicario veram obedientiam spondeo ac iuro.

Cetera item omnia a sacris Canonibus et Oecumenicis Conciliis, ac praecipue a sacrosancta Tridentina Synodo et ab Oecumenico Concilio Vaticano tradita, definita ac declarata, praesertim de Romani Pontificis primatu et infallibili magisterio, indubitanter recipio atque profiteor, simulque contraria omnia, atque haereses quascunque ab Ecclesia damnatas et reiectas et anathematizatas, ego pariter damno, reiicio et anathematizo. Hanc veram Catholicam Fidem, extra quam nemo salvus esse potest, quam in praesenti sponte profiteor et veraciter teneo, eandem integram et inviolatam usque ad extremum vitae spiritum, constantissime, Deo adiuvante, retinere et confiteri, atque a meis subditis seu illis, quorum cura ad me in munere meo

spectabit, teneri et doceri et praedicari, quantum in me erit curaturum, ego idem *N.* spondeo, voveo ac iuro. Sic me Deus adiuvet, et haec sancta Dei Evangelia.

Iurisiurandi Formula contra modernismi doctrinas

Juxta Motu Proprio "Sacrorum Antistitum" Primi Septembris, 1910. (*Acta Ap. Sedis,* II, 669.)

Ego .. firmiter amplector ac recipio omnia et singula, quae ab inerranti Ecclesiae magisterio definita, adserta ac declarata sunt, praesertim ea doctrinae capita, quae huius temporis erroribus directo adversantur. Ac primum quidem Deum, rerum omnium principium et finem, naturali rationis lumine per ea quae facta sunt, hoc est per *visibilia* creationis opera, tamquam causam per effectus, certo cognosci, adeoque demonstrari etiam posse, profiteor. Secundo: Externa revelationis argumenta, hoc est facta divina, in primisque miracula et prophetias admitto et agnosco tamquam signa certissima divinitus ortae Christianae Religionis, eademque teneo aetatum omnium atque hominum, etiam huius temporis, intelligentiae esse maxime accommodata. Tertio: Firma pariter fide credo, Ecclesiam, verbi revelati custodem et magistram, per ipsum verum atque historicum Christum, quum apud nos degeret, proxime ac directo institutam, eandemque super Petrum, apostolicae hierarchiae principem eiusque in aevum successores aedificatam. Quarto: Fidei doctrinam ab Apostolis per orthodoxos Patres eodem sensu eademque semper sententia ad nos usque transmissam, sincere recipio; ideoque prorsus reiicio haereticum commentum evolutionis dogmatum, ab uno in alium sensum transeuntium, diversum ab eo, quem prius habuit Ecclesia; pariterque damno errorem omnem, quo, divino deposito, Christi Sponsae tradito ab eaque fideliter custodiendo, sufficitur philosophicum inventum, vel creatio humanae conscientiae, hominum conatu sensim efformatae et in posterum indefinito progressu perficiendae. Quinto: Certissime teneo ac sincere profiteor, Fidem non esse coecum sensum religionis e latebris *subconscientiae* erumpentem, sub pressione cordis et inflexionis voluntatis

moraliter informatae, sed verum assensum intellectus veritati extrinsecus acceptae ex auditu, quo nempe, quae a Deo personali, creatore ac domino nostro dicta, testata et revelata sunt, vera esse credimus, propter Dei auctoritatem summe veracis.

Me etiam, qua par est, reverentia, subiicio totoque animo adhaereo damnationibus, declarationibus, praescriptis omnibus, quae in Encyclicis litteris *'Pascendi'* et in Decreto *'Lamentabili'* continentur praesertim, circa eam quam historiam dogmatum vocant. — Idem reprobo errorem affirmantium, propositam ab Ecclesia fidem posse historiae repugnare, et catholica dogmata, quo sensu nunc intelliguntur, cum verioribus Christianae Religionis originibus componi non posse. — Damno quoque ac reiicio eorum sententiam, qui dicunt, christianum hominem eruditiorem induere personam duplicem, aliam credentis, aliam historici, quasi liceret historico ea retinere quae credentis fidei contradicant, aut praemissas adstruere, ex quibus consequatur dogmata esse aut falsa aut dubia, modo haec directo non denegentur. — Reprobo pariter eam Scripturae Sanctae diiudicandae atque interpretandae rationem, quae, Ecclesiae traditione, analogia Fidei, et Apostolicae Sedis normis posthabitis, *rationalistarum* commentis inhaeret, et criticen textus velut unicam supremamque regulam, haud minus licenter quam temere amplectitur. — Sententiam praeterea illorum reiicio qui tenent, doctori disciplinae historicae theologicae tradendae, aut iis de rebus scribenti seponendam prius esse opinionem ante conceptam sive de supernaturali origine catholicae traditionis, sive de promissa divinitus ope ad perennem conservationem uniuscuiusque revelati veri; deinde scripta Patrum singulorum interpretanda solis scientiae principiis, sacra qualibet auctoritate seclusa, eaque iudicii libertate, qua profana quaevis monumenta solent investigari. — In universum denique me alienissimum ab errore profiteor, quo *modernistae* tenent in sacra traditione nihil inesse divini; aut, quod longe deterius, pantheistico sensu illud admittunt; ita ut nihil iam restet nisi nudum factum et simplex, communibus historiae factis aequandum; hominum nempe sua industria, solertia, ingenio scholam a Christo eiusque Apostolis inchoatam per subsequentes aetates continuantium. Proinde fidem Patrum firmissime retineo et ad extremum vitae spiritum retinebo, de charismate *veritatis certo*, quod est, fuit eritque semper in *episcopatus ab Apostolis successione;* non ut id teneatur quod melius et

aptius videri possit secundum suam cuiusque aetatis culturam, sed ut *nunquam aliter credatur, nunquam aliter* intelligatur absoluta et immutabilis veritas ab initio per Apostolos praedicata.

Haec omnia spondeo me fideliter, integre sincereque servaturum et inviolabiliter custoditurum, nusquam ab iis sive in docendo sive quomodolibet verbis scriptisque deflectendo. Sic spondeo, sic juro, sic me Deus adjuvet et haec sancta Dei Evangelia.

APPENDIX I

DOCUM. I

Constitution of Pope Pius X "Vacante Sede Apostolica," December 25, 1904

This Constitution lays down the rules, which shall govern future Papal elections, and abrogates all previous Constitutions and Decrees on this subject except the Constitutions "Commissum Nobis" (Document II) and "Praedecessores Nostri," with its Instructions (Document III).

Title I defines the powers of the Sacred College of Cardinals during the vacancy of the Apostolic See, and details the procedure to be followed by the Sacred Congregations and various officials of the Holy See in dealing with current business.

Title II gives explicit directions regarding the Conclave—the electors and their servants, their entrance into the Conclave, the precautions for preserving secrecy, the manner of election, the form of the ballot, the proclamation of the election, and the consecration and coronation of the new Pope.

DOCUM. II

Constitution of Pope Pius X "Commissum Nobis," January 20, 1904

Under pain of excommunication *latae sententiae,* reserved specially to the future Pope, this Constitution forbids any member of the Conclave to manifest in any manner whatsoever (even as a mere desire) or under any pretext the *Veto* of a Civil Power.

DOCUM. III

Constitution of Pope Leo XIII "Praedecessores Nostri," with Its Instructions, May 24, 1882

As stated above, this is one of the three Constitutions which now govern Papal elections. It contains explicit directions as to how the

Cardinals should conduct themselves in the various emergencies which may arise between the death of a Pope and the election of his successor.

DOCUM. IV

Constitutio Benedicti PP. XIV "Cum illud," 14 Decembris 1742

Cum illud semper plurimum formidaverit Ecclesia Catholica, ne indignis quibusque, et extra sacerdotale meritum constitutis, cura animarum, et Dominici gregis custodia crederetur; quia totius familiae status, et ordo nutat, si quod requiritur in corpore, non invenitur in capite: Hinc canonicis sanctionibus, ac praesertim Sanctae Tridentinae Synodi Decretis provide consultum est, regimen ecclesiarum parochialium iis esse committendum, quorum omnis aetas a puerilibus exordiis ad perfectiores annos per disciplinae ecclesiasticae stipendia ita cucurrisset, ut de illorum supra alios provectione, ac potiori doctrinae, morum, ac diuturni laboris suffragio, nefas esset dubitare. Quia vero perniciosa apud plurimos opinio sensim invaluit, Tridentini Decretis non praescriptam esse dignioris electionem. sed caveri tantummodo, ne indignis ecclesiae parochiales, aliaque beneficia, quibus cura imminet animarum, conferrentur; san. mem. Innocentius XI Praedecessor Noster erroneam doctrinam a vera, et sincera Patrum mente longius deflectentem damnavit, et edocuit, quam prudens, ac diligens esse debeat Pastoralis officii dispensatio.

§ 1. Ad tramites idcirco eiusdem Sanctae Synodi, usu receptum est, occurrente parochialis ecclesiae vacatione, quae libere ab Ordinario conferenda sit, concursum institui, ut, habita in eo de cuiuslibet aetate, moribus, doctrina, et sufficientia, solerti inquisitione, Episcopus eligat quem caeteris magis idoneum iudicaverit.

§ 2. At quia contingere quandoque potest, quod favore, vel gratia, vel minus aequo iudicio, minus digni dignioribus praeponantur, san. mem. Pius V Noster Praedecessor, ne quid in huiusmodi electione esset inordinatum, atque praeposterum, edita saluberrima Constitutione, licere voluit iniuste in concursu reiectis, interposita ad Metropolitanum, vel Episcopum viciniorem, vel Sedem quandoque Apostolicam appellatione, praeelectum ad novum examen provocare, et ecclesiam alteri non rite collatam, novo facto meritorum periculo, si ita ius esset. vindicare. Et ne frivolae appellationis diffugio locus esset, provide ibidem cautum est, dictae appellationi in devolutivo tantum deferri oportere, non suspensa, aut quoquo modo retardata praeelecto ab Ordinario parochialis ecclesiae possessione.

§ 3. Consultissimae huiusmodi leges eum in finem institutae, ne in

tanti momenti re imperiti magistris, novi antiquis, rudes praeferantur emeritis, violatae sunt hominum fraude et malitia, ipsa medela vulnus exasperantium. Saepissime enim reiecti ab Ordinario, dictae Constitutionis obtentu, in vocem appellationis facile prorumpere, et, minus legitima concurrente causa, electos ab Episcopo ad novum examen provocare consueverant; illosque praeterea, relicta gregis, et ecclesiae custodia, longum iter arripere, et diuturni laboris, temporis, et pecuniae impensa exhaustos, litem in secunda, tertia, et ulteriori quandoque instantia sustinere cogebant.

§ 4. Quin etiam experientia compertum est, magno iustitiae detrimento litem ipsam absolvi. Quandoquidem ii, qui examini se subiecerant, atque in primaevo concursu, utpote legitimarum institutionum nescii, reiecti fuerant, longa postmodum decurrente lite, sedulam litteris ex industria navantes operam, praeferri aliis merebantur, et acerbe succensebant Episcopo, iudici quidem adeptae, non autem adipiscendae peritiae, per iniuriam se fuisse reiectos.

§ 5. Hinc apud bene moratos homines, et iustitiae vindices, frequens querelarum occasio: quibus sedandis cum Congregatio Concilii Tridentini interpres omne studium, diligentiamque conferret; Nobis, qui Secretarii munere fungebamur, mandatum est, ut sermone, typis postea vulgato, rem sedulo expendere, ingruentis mali originem, et apta eidem avertendo remedia investigare pro viribus niteremur. Sensus hac de re Nostros explicantes, vitio potissimum laborare comperuimus praxim examinis oretenus habiti, nec scriptis consignati: electi siquidem ad curam animarum ab Ordinario collatore, et ad iteratum examen coram alio iudice provocati, ius legitimae collationis tueri non poterant certo, ac permanenti testimonio iam probatae idoneitatis; sed a novi examinis alea, subeunda coram iudice appellationis, gestarum rerum prorsus ignaro, tota res pendere videbatur. Quocirca gravi iustitiae detrimento recepta in foro erat opinio, provocari posse ad alium iudicem, nullo exhibito indebitae reiectionis documento. Quod quidem cum a sacrorum canonum censura longius aberraret, facile huic corruptelae occurri posse censuimus, si certa primum, et apte disposita habendi examinis forma praescriberetur; si quaestiones examinatis propositae, et consentaneae illorum responsiones, totaque rei gestae series in scriptis redigeretur; et si acta demum totius concursus ad iudicem appellationis integra asportarentur.

§ 6. Inita a Nobis consilii ratio non solum arrisit Congregationi, illam die 16 Novembris 1720 ratam habenti; sed etiam Pontificii iudicii accessione roborata fuit a Clemente XI ecclesiasticae disciplinae vindice, et assertore eximio. Utque locorum Ordinarii ea omnia filiali, quo par erat, obsequio, et diligentia exequerentur, iis datae sunt die 10 Ianuarii 1721 opportunae litterae nostro calamo exaratae, eiusdemque

Pontificis sensu, et oraculo comprobatae, quarum tenorem, etsi alias praelo commissum, et insertum in Bullario dicti Clementis Praedecessoris Nostri, congrue hic duximus referendum.

§ 7. *Reverendissime Domine uti Frater. Quo parochiales ecclesiae dignioribus personis gubernandae traderentur, statuit, ut notum est, Sacrosancta Tridentina Synodus sess. 24, cap. 18, ut, vacante ecclesia parochiali, indiceretur, et fieret concursus; ac, postquam concurrentes ab Episcopo, vel eius Vicario Generali, atque ab Examinatoribus Synodalibus saltem tribus, examinati, et approbati essent, Episcopus eum eligeret, quem aetate, moribus, doctrina, prudentia, aliisque rebus ad vacantem ecclesiam gubernandam necessariis, et opportunis, digniorem caeteris, magisque idoneum iudicaret. Adiecitque ad hanc Concilii sanctionem validius confirmandam, re, et nomine sanctissimus Pontifex Pius V, quod, si unquam Episcopus minus habilem, postpositis magis idoneis, elegisset, possent ii, qui reiecti essent, a mala eiusmodi electione ad Metropolitanum, vel, si ipse eligens Metropolitanus, aut exemptus foret, ad viciniorem Ordinarium, ut Sedis Apostolicae Delegatum, vel alias ad ipsam Sedem Apostolicam appellare, ac praeelectum ad novum examen coram ipso appellationis iudice, et eius Examinatoribus, provocare; ea tamen cautione, ut appellatio non in suspensivo, sed in devolutivo esse deberet; quemadmodum in eius Constitutione, quae trigesima tertia est, latius cavetur; concludendo, quod, constito de prioris eligentis irrationabili iudicio, eoque revocato, parochialis ecclesia magis idoneo conferatur.*

Cum autem neque Concilii Decreto, neque Pontificis Bulla examinis in concursu peragendi forma, seu methodus ulla certa, ac peculiaris servanda proponatur; difficile dictu est, quanta examinum, aliorum alibi diversitas, extiterit, atque hinc occasio querelarum. Nam alicubi, cum non eaedem omnibus quaestiones, non iidem casus propositi fuissent; erant identidem, qui, vel in iudicio, vel extra conquererentur, sibi quidem postpositis difficiliores, praeelecto autem faciliores ad solvendum quaestiones obtigisse. Alibi vero eaedem quidem omnibus quaestiones propositae fuerunt, sed neque hae, neque datae a concurrentibus responsiones, scripto, seu litteris consignabantur. Cumque postmodum, nec raro contingeret, ut e postpositis quispiam, iure Bullae supradictae, novum ad examen coram iudice appellationis, eiusque examinatoribus, electum provocaret: S. Congregatio usque ab anno 1603 considerans gravamen non alia ratione, quam novo examine, probari posse; provocationem ad novum examen censuit admittendam, gravamine nec dum probato, et requisitis tantummodo probationibus in subsequenti iudicio: in quo, probato, per novum examen appellantis, gravamine quoad doctrinam, probanda superest eiusdem prae iam electo in reliquis ad regendam ecclesiam requisitis praestantia, ut

de maiori alterutrius ad parochialis ecclesiae gubernium idoneitate sententia ferri possit: cum non continuo, si quis est doctior, is etiam aptior, seu magis idoneus ad id regimen habeatur, vel etiam habendus sit. Quam Sacrae Congregationis sententiam scriptores, et tribunalia laudarunt. Aliis demum in dioecesibus laudabilis invaluit consuetudo, ut eaedem omnibus quaestiones, iidemque casus prononantur; ac (ne qua detur ansa Cancellario quidquam suo marte addendi, minuendi, mutandi) ut ipsimet concurrentes, qui interrogati fuerint, quaeque responderint, sua manu perscribant.

Atque Ordinarii, qui morem hunc longe optimum in examinando tenuere, Sacrae deinde Congregationi etiam, atque etiam considerandum reliquerunt, his, qui sic examinati essent, atque postpositi, in posterum, ut solent, appellantibus, indulgenda, nec ne, statim electi novum ad examen provocatio, nulla gravaminis praerequisita probatione, videretur; cum isti ex actis primi examinis gravamen doctrinae facile alioquin probare possent; quod alii aliter nimirum examinati, probare, nisi secundo, seu novo examine, non poterant. Nec defuere alii probitatis, ac peritiae in administrandis diu ecclesiis laude praestantes, qui monerent, fraenum aliquod huiusmodi appellantium licentiae tandem iniiciendum, eorumque iam nimis crebras novum ad examen provocationes esse reprimendas; quippe quae vix unquam sine magno ecclesiarum damno contingunt. Nam cum novum examen coram iudice appellationis longe procul a parochia peragendum sit; electus ab Episcopo, qui provocatur, parochiam, quam possidet, cogitur interea temporis deserere, eamque Oeconomo, vel Vicario cuipiam, veluti sponsam ignotis custodibus, relinquere, sponso non parumper, sed diu sane abfuturo; dum nempe, implicita, ut fit, lite, terna etiam vel quaterna, alia ex aliis, examina, super praestantia primum doctrinae, tum deinde aliorum, quae ad integrandam idoneitatem opportuna sunt, contentiose multiplicentur, et commode, ne dicam otiose, transigantur, antequam deliberari possit utri concurrentium parochia sit adiudicanda.

Ad tollendam eiusmodi non minus querelarum, quam incommodorum occasionem, Sacra Congregatio Concilii Tridentini interpres, postquam rem omnem a capite repetitam in gemina sessione 1 Octobris, et 16 Novembris 1720 summo studio recognovit, tandem, Sanctissimo etiam annuente, statuit (quod per praesentes litteras encyclicas exequitur) omnes, et singulos Episcopos, aliosque Praelatos, penes quos sit ius, et auctoritas faciendi concursum, hortari, ut examen eiusmodi instituere non graventur, quale iam et multae dioeceses, et Urbs ipsa observat, atque Apostolica etiam Dataria postulat; sive, cum, Sede vacante, vacat ecclesia aliqua parochialis, cuius collatio ad Sedem Apostolicam pertineat; sive cum vacat parochialis aliqua, ut dicitur, iuxta Decretum; sive demum, cum, vacante in collegiatis, aut cathedralibus ecclesiis dig-

nitate aliqua maiori, annexam habente curam animarum, faciendus est concursus, atque ad Apostolicam Datariam transmittendus, ut notum est, atque in litteris, quae de ordine Sanctissimi, tunc a Dataria prodeunt, clare praescribitur.

Vacante itaque ecclesia parochiali, quae conferenda sit per concursum, atque hoc solitis formulis indicto, haec quae sequuntur, ex Sacrae Congregationis sententia, consilio, suasione, servanda proponuntur.

1. *Primum nempe, ut assignentur eaedem omnibus concurrentibus quaestiones, iidem casus, idemque textus Evangelii, super quo sermonis aliquid perscribant, ad probandam dicendi pro concione facultatem.*

2. *Alterum, ut casus, et quaestiones resolvendae dictentur omnibus eodem tempore, atque omnibus pariter eodem tempore textus Evangelii tradatur.*

3. *Tertium, ut certum, idemque omnibus spatium temporis constituatur, intra quod casus resolvant, quaestionibus respondeant, conciunculam componant.*

4. *Quartum, ut eodem concurrentes omnes in conclavi claudantur, unde, quandiu scribent (dabitur enim omnibus scribendi copia) nemo eorum egredi, neque alius quispiam eo ingredi possit, nisi postquam scripta confecerint, et exhibuerint.*

5. *Quintum, ut omnes sua quisque manu tum responsa, tum sermonem scribant, subscribantque.*

6. *Sextum, ut responsa quidem latine, sermo autem ea, qua ad populum haberi solet, lingua scribatur.*

7. *Postremum, ut unumquodque responsum, et unusquisque sermo, cum ab unoquoque concurrentium exhibebitur, non solum ab eo, qui scripsit, atque a Cancellario concursus, verum etiam ab Examinatoribus, et ab Ordinario, vel eius Vicario, qui concursui interfuerint, subscribatur.*

Peracto secundum hanc formulam concursu, collataque ei, qui magis idoneus, ac dignior indicatus fuerit, ecclesia parochiali, non admittatur appellatio, aut a mala relatione Examinatorum, aut ab irrationabili iudicio Episcopi, nisi intra decem dies a die collationis interponatur.

Si quis autem hoc intra spatium appellaverit, actaque concursus petat ad iudicem appellationis transferenda; mittantur vel acta ipsa originalia concursus clausa, et obsignata, vel certe unum aliquod authenticum eorum exemplum, a Cancellario concursus, atque altero notario collatum, et auscultatum coram Vicario, vel alio in ecclesiastica dignitate constituto, quem eligat Ordinarius, ad quem etiam notarii Cancellario adiungendi electio pertinebit; necnon ab Examinatoribus Synodalibus, qui concursui interfuerunt, subscriptum.

Ex quibus actis, vel authentico eorum exemplo, nisi gravamen quoad doctrinam probet is, qui sic, ut praemittitur, examinatus, aut a mala

relatione Examinatorum, aut ab irrationabili iudicio Episcopi appellaverit, novum ad examen provocandi facultatem a Sacra Congregatione frustra postulabit.

Quemadmodum et in iudicio appellationis persequi ius suum frustra tentabit is, qui forte se gravatum doleat quoad reliqua, nisi, interposita mature, ut dictum est, appellatione ab irrationabili iudicio Episcopi, gravamen quoad illa ostenderit, vel ex actis primi concursus, vel saltem ex attestationibus, et documentis extraiudicialibus etiam, sed non levibus.

Atque ita quidem sensit Sacra Congregatio, et Sanctissimus assensit.

At si quis tamen Ordinariorum aliter, ac supra descriptum est, concurrentium examina instituere perrexerit, perget et Sacra ipsa Congregatio more pristino appellantibus, qui se gravatos dixerint, provocationem ad novum examen, nulla gravaminis praevia probatione, indulgere. Interim tamen, ne harum litterarum memoria dilabatur, vult eadem Sacra Congregatio, eas in uniuscuiusque Ordinarii Cancellaria perpetuo conservari. Cuius interea consilium, tum voluntatem, dum ego omnibus significo, Amplitudini Tuae fausta omnia e coelo precor. Romae hac die 10 Ianuarii 1721.

Amplitudinis Tuae.

Uti frater

P. M. Card. CORRADINUS, Praefectus.

P. Lambertinus, *Secretarius.*

§ 8. Quantum recte dispensandis ecclesiasticis muneribus, administrandae iustitiae, componendis dissidiis, continendisque in officio clericis proficeret saluberrima praemissarum legum institutio, satis superque experientia comperuimus, cum Anconitanam primum ecclesiam, ac deinde Bononiensem sponsam nostram paterna charitate cominus amplecteremur. Freti siquidem dictarum legum praesidio, digniores parochiis, et curae animarum praefecimus: tantaque, benedicente Domino, id accidit animorum consensione, ut nemo questus sit, traditum minus digno celsioris loci praemium, vel minus iuste alteri credita vacantis ecclesiae gubernacula.

§ 9. At quia certis admonemur indiciis, non ita id aliis Episcopis contigisse; imo non deesse, qui privatis abrepti studiis, saepe declinare, ac redarguere iudicium Episcopale praesumant: Nos propterea solliciti de implendis, prout decet, muneris Nostri partibus, nonnulla praefatis litteris addenda, nonnulla vero tacite, breviterque ibidem tradita, clarius explicanda censuimus, ut recte omnia, atque ex ordine peragantur.

§ 10. Moerentes igitur audivimus, quod in plerisque dioecesibus, etsi recepta sit laudabilis, firmiterque custodienda consuetudo in scriptis

redigendi examen concurrentium, nihilominus Examinatorum suffragia in sola litterarum peritia versantur, nec illorum exquiritur sententia de clericorum aetate, institutione, gravitate, et honestate morum, prudentia, muniis antea exercitis, et an tales demum sint, qui oves suas verbo, et exemplo iuvare possint. Quam devia sit huiusmodi praxis a Tridentini semita, is plane intelliget, qui expendet verba relata *cap. 18, sess. 24, de Reformat.: Peracto deinde examine, renuntientur quotcumque ab his idonei iudicati fuerint moribus, doctrina, prudentia, et aliis rebus ad vacantem ecclesiam gubernandam opportunis.* Idque probe noscens Congregatio eiusdem Concilii interpres, pluries edixit, Examinatores suo deesse muneri, si doctrinae tantum iudices essent, nec inquirerent, qui prae aliis, probitate morum, laboribus, praestito antea ecclesiae obsequio, caeterisque dotibus ad officium parochi cumulate obeundum necesariis, essent idonei, et commendabiles.

§ 11. Absoluto examine, ut cuique satis compertum est, sit tantummodo potestas Examinatoribus renuntiandi quotquot regendae ecclesiae idoneos iudicaverint, reservata uni Episcopo electione dignioris, quemadmodum sancitum est a Tridentino illis verbis: *Ex hisque Episcopus eligat, quem caeteris magis idoneum iudicaverit:* At si quem clericorum forte contigerit appellare a mala relatione Examinatorum, quorum cura unice versata fuerit in exquirenda doctrina, non facta uno eodemque tempore solerti etiam investigatione aliarum qualitatum, quae Pastoris congruant officio; ordo iudicii secumferet: ut etiam iudex, ad quem provocatum fuit, in sola doctrinae indagine immoretur: nec sine gravi animarum detrimento, et disciplinae iniuria, praeficiatur ecclesiae, qui litteris magis posset, licet caetera minus aptus, et quandoque indignus; contra vero arceatur ille, qui licet impar doctrinae merito, attamen moribus, gravitate, prudentia, probato nomine, diuturno ecclesiae famulatu, ac multiplici virtutum laude praecellit.

§ 12. Factum praeterea satis extirpandis abusibus non videtur, si tam Episcopus, quam Examinatores, coniunctis studiis, industriae nervos omnes intenderint in conferenda concordi iudicio Ecclesia personae, quae licet scientia, et litteris alteri concedat, maiori tamen caeterarum qualitatum eminet ornamento; siquidem postpositus, suae nimium fidens doctrinae, ab irrationabili iudicio Episcopi non raro appellat; causaque ad iudicem appellationis delata, idem totus est in perquirenda maiori doctrina, ac reparando gravamine litterato homini irrogato, nusquam librato aliarum virtutum pondere, quae in appellante desiderantur: lugentque ut plurimum vigiles Ecclesiarum Antistites exitum huiusmodi appellationis, intimeque dolent, parochias doctis, non aptis Pastoribus, ut dictum est, regendas committi.

§ 13. At si iudex etiam appellationis (quod raro evenit) tantum tribuens scientiae, quantum satis, maiori, et accuratiori examine inqui-

rat, qui mores hominum sint, quae gravitas, prudentia, qui suscepti antea labores, quae virtutum specimina, quae demum totius anteactae vitae ratio, pascendo gregi consentanea: tot iudici exhibentur attestationes ab appellante ex industria collectae, ut, revocato Episcopali iudicio, tamquam irrationabili, non vereatur iudex succurrere eidem appellanti, quem tam copiosa, tamque conspicua probitatis adiuvant documenta.

§ 14. Demum cum praecipue Episcopis, tanquam in specula constitutis, pateant subditorum excessus, contingere solet, ut in concursu, tam inspecta scientia, quam moribus, ille idoneus ab Examinatoribus renuntietur, cui foeda aliqua vitii labes, ac criminis macula inusta sit, omnibus, praeterquam Episcopo, occulta. Si Episcopus, iusta suadente causa, crimine non revelato, eumdem criminosum tacitus praeterierit, aliumque immunem a sorde praeelegerit, illico postpositus, simulato gravamine, provocat ad superiorem iudicem criminis ignarum, et consueto diffugio appellationis, evehitur ad pastorale fastigium, qui non potest consulere populo, sed nocere, nec praestare regimen, sed augere discrimen.

§ 15. Ne igitur improbi ingenii homines remedium appellationis, ad iustitiae praesidium institutum, callide traducant ad iniquitatis defensionem: optimum factu aliquibus fortasse videretur, si appellatione quavis sublata, cura praeficiendi rectores animarum prorsus relinqueretur Episcopis, rationem villicationis suae Christo iudici tantum reddituris. Verum nullo pacto probare id possumus, quod adversaretur menti Concilii Tridentini, tacite permittentis appellationem in devolutivo a mala relatione Examinatorum, quemadmodum innuere videntur verba illa: *Nec praedictorum Examinatorum relationem, quominus executionem habeat, ulla devolutio, et appellatio, etiam ad Sedem Apostolicam, sive eiusdem Sedis Legatos, aut Vice-Legatos, aut Nuntios, seu Episcopos, aut Metropolitanos, Primates, vel Patriarchas interposita impediat, aut suspendat.* Cui sanctioni respondet etiam Constitutio Piana, admittens appellationem in devolutivo ab irrationabili iudicio Episcopi.

§ 16. Qua de re, ut in huiusmodi negotio apte omnia atque composite paragantur, officii Nostri esse duximus, eum vobis, ven. Fratres, gerendarum rerum ordinem praescribere, quem longo usu utilem agnovimus instituendis animarum rectoribus, qui credito sibi gregi praeesse, et prodesse possint.

I. Episcopus, habita notitia vacationis ecclesiae, statim, ad praescriptum Tridentini, idoneum in ea deputet Vicarium, cum congrua eius arbitrio fructuum portionis assignatione, qui onera ipsius ecclesiae sustineat, donec ei de rectore provideatur.

II. Publico evulgetur edicto notitia concursus, congruo, et ab Epis-

copo praefinito tempore celebrandi: eodemque edicto omnes clare, et aperte moneantur, ut interim decurrente termino assignato, coram Cancellario Episcopali, vel altero ab Episcopo deputando, suarum qualitatum, meritorum, et munerum probationes, attestationes tam iudiciales quam extraiudiciales, aliaque id genus documenta, quae fraude vacent, exhibeant. Alioquin, dicto termino elapso, documenta huiusmodi, quaecumque, et qualiacumque ea sint, nullatenus recipientur.

III. Eveniente die concursus, a Cancellaria Episcopali singulorum merita, qualitates, et requisita (ut vocant), incorrupta fide deprompta a iuribus tempore habili exhibitis, in scriptis summatim redigantur: porro copia epitomes tradetur non solum Episcopo, vel Vicario Generali vices illius obeunti, sed singillatim omnibus Examinatoribus ad concursum adscitis, ut cum de scientia, tum de vita, moribus, aliisque regendae ecclesiae necessariis dotibus ferant iudicium.

IV. Die praestituta ab Episcopo habeatur concursus, servata accurate in omnibus forma tradita in supra relatis litteris anno 1721 editis, totaque rerum in eo gestarum series scriptis diligenter enucleetur. Porro Examinatores, ad assequendam certam, et indubiam coniecturam scientiae, postquam diligenter expenderint singulorum peritiam in evolvendo, explicandoque oretenus aliquo ecclesiasticae doctrinae capite, vel a SS. Patribus, vel a Sacro Concilio Tridentino, vel a Catechismo Romano excerpto, ac pari diligentia libraverint a quolibet scripto datas responsiones quaestionibus propositis; et postquam demum deprehenderint qua quisque polleat gravitate sententiarum, et elegantia sermonis in conciuncula scripto pariter exarata, et textui evangelico, vel alteri dato themati accommodata: parem, ni forte maiorem solertiam Examinatores adhibeant in perscrutandis aliis qualitatibus, regimini animarum consentaneis: morum honestatem inquirant, gravitatem, prudentiam, praestita hactenus Ecclesiae obsequia, acquisitam in aliis muneribus laudem, aliaque spectabilium virtutum ornamenta, doctrinae arcto foedere consocianda; hisce omnibus coniunctim expensis, inhabiles per sua suffragia reiiciant, et idoneos Episcopo renuntient.

V. Absoluto concursu ab Episcopo, vel, eo impedito, a Vicario Generali una cum Examinatoribus Synodalibus non paucioribus quam tribus, notula compendiaria requisitorum antea distributa tradatur Cancellario, qui illam comburat, vel penes acta secreto custodiat, et nemini ostendat, nisi de mandato Episcopi, vel eius Vicarii Generalis. Subinde vero Ordinarius, cum primum ei libuerit, eligat ex approbatis digniorem, nec illi possessio, ullo appellationis vel inhibitionis obtentu, retardetur.

VI. Si quem clericorum appellare contigerit a mala relatione Examinatorum, vel ab irrationabili iudicio Episcopi: coram iudice appellationis acta concursus integra omnino producat; et iudex, nisi illis visis,

et gravamine comperto, sententiam non pronunciet. Praeterea in ferenda sententia, ac reparando gravamine, idem iudex innitatur solummodo probationibus ab actis elicitis, tam respectu doctrinae, quam aliorum meritorum. Quia vero a publica indictione, usque ad diem habiti concursus, tantum temporis intercessit quantum satis fuit commode exhibendis necessariis iuribus, attestationibus, requisitis, aliisque meritorum documentis; idcirco, ut quaevis via fraudibus praecidatur, volumus, ac districte mandamus, ne dictae attestationes, fides tam iudiciales, quam extraiudiciales, et documenta quaecumque studiose conquisita, et post concursum, ut aiunt, expiscata, ullo modo recipiantur. Non obstantibus supra memoratis litteris, a Congregatione Concilii Tridentini interprete anno 1721 editis, quibus, ad praemissorum effectum in hac parte derogamus, illis tamen in reliquis, una cum omnibus in eis contentis, firmiter in suo robore permansuris.

VII. Ubi vero Episcopus, posthabito uno, vel altero ex approbatis, ecclesiam contulerit magis idoneo ob aliquam sibi ipsi tantum notam causam, quam censeat significari oportere iudici appellationis ad detergendam iniustae fortasse praeelectionis notam: familiaribus litteris iudicem certiorem efficiat, inviolabilis secreti lege adiecta. Nemo sit, qui hanc praxim Nostrae tribuat solertiae, cum illa profluat a Tridentini Decretis, *Sessione* etenim *24, cap. 20 de Reform.* ita disponitur: *Praeterea si quis in casibus a iure permissis appellaverit, aut de aliquo gravamine conquestus fuerit, seu alias, ob lapsum biennii, de quo supra, ad alium iudicem recurrerit, teneatur acta omnia coram Episcopo gesta ad iudicem appellationis expensis suis transferre,* EODEM TAMEN EPISCOPO PRIUS ADMONITO, UT SI QUID EI PRO CAUSAE INSTRUCTIONE VIDEBITUR, POSSIT IUDICI APPELLATIONIS SIGNIFICARE.

Et quamvis iure Nobis timendum sit, ne dicta praxis monendi iudicem, a quo appellatum est, in more olim posita, hac tempestate obsoleverit, et a foro recesserit; attamen Episcopus (ut dictum est) si ex causa sibi tantum, et non aliis nota, quae tamen approbari digna sit, ecclesiam contulerit; illam iudici appellationis, datis secreto litteris, denunciet, et aperiat. Sciant porro iudices, delatas ab Episcopo causas, et rationes, inviolabilis secreti fide esse custodiendas, nec parvipendendum esse testimonium illius Pastoris, cui divino mandatur eloquio, oves suas agnoscere. Facile enim credi non potest, Episcopos suae non minus, quam alienae salutis adeo immemores, ut non deterriti divini interminatione iudicii, odio vel favore moveantur; et in Sacrorum Canonum singularem iniuriam, *dicant malum bonum, bonum malum, ponentes tenebras lucem, et lucem tenebras.*

Si vero Episcopo fuerit suspecta fides iudicis, ad quem appellatum est, nec eidem revelanda censuerit huiusmodi occulta rationum momenta: illa significet secretis litteris S. R. E. Cardinali Praefecto

pro tempore Congregationis Concilii, qui nec consilio, nec auctoritate deerit, quo minus a iudice appellationis debitus iustitiae locus tribuatur.

§ 17. Praeterea quia aequitati etiam convenit, causas appellationis, quae magno litigantium dispendio, et Ecclesiae pernicie, immortales quandoque existunt, quanta fieri potest brevitate terminari: ideireo ubi a iudice appellationis lata sit sententia, quae praeelectioni factae ab Episcopo omnino sit conformis, nullas pateat novae appellationi aditus, sed auctoritate rei iudicatae controversiae finis imponatur. Sin vero iudex appellationis aliter, quam Ordinarius, pronunciaverit; liceat praeelecto ab Episcopo, qui causa cecidit, ad alium iudicem appellare, firmiter interim retenta parochialis ecclesiae possessione. Tandem postquam tertius quoque iudex sententiam dixerit, ne partes ultra modum graventur laboribus, et expensis, praesertim quia agitur de cura animarum, cui damnosum est, certi Pastoris destitui solatio; is legitimum regendae ecclesiae ius obtineat, cui duae conformes assistunt sententiae, nec ullum novae appellationis remedium succumbenti suffragetur.

§ 18. His sane regulis, quamvis appellatio sublata non sit, satis tamen praesidii comparatum esse arbitramur ecclesiasticae disciplinae, ac recto gerendarum rerum ordini. Unum superest, ut proposita hactenus media debitae executioni mandentur; eumque in scopum locorum Ordinarii vigilantiam suam desiderari non patiantur. Ferendum quippe non esset, ad nostri Apostolatus auditum novas in diem deferri querelas, ac submovendis abusibus novas implorari leges, ab iis, qui iam praestitutas negligunt et contemnunt.

§ 19. Demum cum non raro contingat, ecclesias parochiales, dignitates, canonicatus, aliaque beneficia curam animarum habentia, a Sede Apostolica esse conferenda; vel quia vacaverint in mensibus reservatis, vel quia ex alio capite dictae Sedi reservata sint; Nos Praedecessorum Nostrorum vestigiis inhaerentes, praecipimus, et mandamus, ut uno vel altero eveniente casu, concursus ab Episcopo sine ullo discrimine indicatur, nulla ad hunc actum petita venia, vel licentia, quam Nostris hisce litteris sibi tributam Episcopi intelligant.

§ 20. Absoluto concursu, si res sit de beneficiis curatis, *quae tantum ratione mensium reservata sint,* Episcopus inter approbatos eligat magis idoneum, et Datariae significet nec acta concursus transmittat, nisi a Dataria, cum id opportunum duxerit, requirantur. Sin vero dicta beneficia, quibus cura imminet animarum, *ex alio quovis capite, quam mensium Apostolicorum,* Sanctae Sedi reservata sint; eo sane casu, veteri non immutato more, abstineat Episcopus a ferendo dignioris iudicio, et acta concursus ultro Datariae exhibeat.

§ 21. Licebit tamen Ordinariis, pro suo arbitrio, familiaribus litteris. Datario scriptis, eidem denunciare personam, quam censent regendae ecclesiae magis idoneam, eumdemque commonere, an occulta aliqua, et

in actis iuste reticita subsit causa quae cuipiam obstet ad beneficium curatum obtinendum. Nos ipsi postmodum ab hac Sede omnium principe, et magistra, luculento edocebimus exemplo, quanti faciendum sit episcopale iudicium, quantoque vos honore prosequamur, venerabiles Fratres, in partem Nostrae sollicitudinis evocatos, quibus interim Apostolicam Benedictionem peramanter impertimur. Datum Romae apud S. Mariam Maiorem die XIV Decembris MDCCXLII. Pontificatus Nostri anno tertio.

DOCUM. V

Constitutio Benedicti PP. XIV "Sacramentum Poenitentiae," 1 Iunii 1741

Sacramentum Poenitentiae, quam secundam, post naufragium deperditae gratiae, tabulam sancti Patres apte nuncuparunt, Nos licet immerentes ad universi dominici gregis curam superna dispositione vocati, omne studium, et pastoralem sollicitudinem adhibere tenemur, ne quod post amissam baptismi innocentiam datum est divina benignitate perfugium, per daemonum fraudem, et hominum Dei beneficiis perverse utentium malitiam, naufragis ac miseris peccatoribus luctuosum evadat exitium; et quod in salutem, et curationem animarum, a Deo, qui dives est in misericordia, institutum est, execrabili scelestorum quorumdam sacerdotum improbitate, in earum perniciem, atque interitum vertatur.

§ 1. Dudum quidem a fel. record. Gregorio Papa XV Praedecessore Nostro per suas litteras in forma Brevium sub datum Romae apud Sanctam Mariam Maiorem die XXX Augusti MDCXXII, Pontificatus sui anno secundo, sapienter provisum fuit contra quoscumque sacerdotes audiendis confessionibus deputatos, ad turpia et inhonesta sollicitantes; et deinceps successivis temporibus, ad earum litterarum interpretationem ac declarationem, plura subinde a Congregatione Venerabilium Fratrum Nostrorum Sanctae Romanae Ecclesiae Cardinalium adversus haereticam pravitatem generalium Inquisitorum sub die XI mensis Februarii Anno Domini MDCLXI, prodierunt decreta, et a rec. mem. Alexandro PP. VII pariter praedecessore Nostro in Congregatione Generali Sanctae Romanae Universalis Inquisitionis die XXIV Septembris MDCLXV coram eo habita, inter alias ab Evangelica veritate, et sanctorum Patrum doctrina alienas et dissonas propositiones, sexta videlicet, et septima, huc revocandae, damnatae, et prohibitae fuerunt. Nos itaque mature perpendentes quanti momenti sit ad aeternam animarum salutem ea ubique exacte observari, et quanti

ad infirmas oves curandas, et decorem Sanctae Ecclesiae Dei retinendum, intersit, ne aliqui sacerdotes Poenitentiae Sacramento nefarie abutentes, poenitentibus pro curatione vulnus, pro pane lapidem, pro pisce serpentem, pro medicina venenum porrigant, sed animo secum recolentes, se a Christo Domino praesides, et iudices animarum constitutos, ea sanctitate, quae sublimitati ac dignitati muneris convenit, tam venerandum Sacramentum administrent: Motu proprio, et ex certa scientia, ac matura deliberatione Nostra, praefatas litteras huiusmodi, ac omnia, et singula decreta praedicta ad illarum interpretationem et declarationem emanata, Apostolica auctoritate tenore praesentium approbamus et confirmamus, illisque omnibus et singulis inviolabilis Apostolicae firmitatis robur adiicimus; atque etiam, quatenus opus sit, denuo committimus et mandamus omnibus haereticae pravitatis Inquisitoribus, et locorum Ordinariis omnium regnorum, provinciarum, civitatum, dominiorum, et locorum universi Orbis Christiani, in suis respective dioecesibus, ut diligenter, omnique humano respectu postposito, inquirant, et procedant contra omnes, et singulos sacerdotes tam saeculares, quam regulares quomodolibet exemptos, ac Sedi Apostolicae immediate subiectos, quorumcumque Ordinum, Institutorum, Societatum, et Congregationum, et cuiuscumque dignitatis, et praeeminentiae, aut quovis privilegio, et indulto munitos, qui aliquem poenitentem, quaecumque persona illa sit, vel in actu sacramentalis confessionis vel ante, vel immediate post confessionem, vel occasione, aut praetextu confessionis, vel etiam extra occasionem confessionis in confessionali, sive in alio loco ad confessiones audiendas destinato, aut electo, cum simulatione audiendi ibidem confessionem, ad inhonesta, et turpia sollicitare, vel provocare, sive verbis, sive signis, sive nutibus, sive tactu, sive per scripturam, aut tunc aut post legendam, tentaverint, aut cum eis illicitos, et inhonestos sermones, vel tractatus temerario ausu habuerint; et quos in aliquo ex huiusmodi nefariis excessibus culpabiles repererint, in eos pro criminum qualitate et circumstantiis, severe animadvertant, per condignas poenas, iuxta memoratam Gregorii Praedecessoris Nostri constitutionem, quam hic de verbo ad verbum pro inserta haberi volumus: dantes etiam, si opus sit, et rursus concedentes facultatem, ne delictum tam enorme, et Ecclesiae Dei iniuriosum, remaneat, ob probationum defectum, impunitum, iam alias in praefata constitutione tributam, procedendi cum testibus etiam singularibus, dummodo praesumptiones, indicia et alia adminicula concurrant.

§ 2. Meminerint praetarea omnes et singuli sacerdotes ad confessiones audiendas constituti, teneri se ac obligari, suos poenitentes, quos noverint fuisse ab aliis, ut supra, sollicitatos, sedulo monere, iuxta occurrentium casuum circumstantias, de obligatione denunciandi Inquisitoribus, sive locorum Ordinariis praedictis, personam, quae sollici-

tationem commiserit, etiamsi sacerdos sit, qui iurisdictione ad absolutionem valide impertiendam careat, aut sollicitatio inter confessarium, et poenitentem mutua fuerit, sive sollicitationi poenitens consenserit, sive consensum minime praestiterit, vel longum tempus post ipsam sollicitationem iam effluxerit, aut sollicitatio a confessario, non pro se ipso, sed pro alia persona peracta fuerit. Caveant insuper diligenter confessarii, ne poenitentibus, quos noverint iam ab alio sollicitatos, sacramentalem absolutionem impertiant, nisi prius denunciationem praedictam ad effectum perducentes, delinquentem indicaverint competenti iudici, vel saltem se, cum primum poterunt, delaturos spondeant ac promittant.

§ 3. Et quoniam improbi quidem homines reperiuntur, qui vel odio, vel ira, vel alia indigna causa commoti, vel aliorum impiis suasionibus, aut promissis, aut blanditiis, aut minis, aut alio quovis modo incitati, tremendo Dei iudicio posthabito, et Ecclesiae auctoritate contempta, innoxios sacerdotes apud ecclesiasticos iudices falso sollicitationis insimulant: ut igitur tam nefaria audacia, et tam detestabile facinus metu magnitudinis poenae coerceatur, quaecumque persona, quae exsecrabili huiusmodi flagitio se inquinaverit, vel per se ipsam innocentes confessarios impie calumniando, vel sceleste procurando, ut id ab aliis fiat, a quocumque sacerdote quovis privilegio, auctoritate, et dignitate munito, praeterquam a Nobis, Nostrisque Successoribus, nisi in fine vitae, et excepto mortis articulo, spe absolutionis obtinendae, quam Nobis et Successoribus praedictis reservamus, perpetuo careat.

§ 4. Demum magnopere cupientes a sacerdotalis iudicii, et sacri tribunalis sanctitate omnem turpitudinis occasionem, et Sacramentorum contemptum, et Ecclesiae iniuriam longe submovere, et tam exitiosa huiusmodi mala prorsus eliminare, et quantum in Domino possumus, animarum periculis occurrere, quas sacrilegi quidam, daemonis potius, quam Dei ministri, loco eas per Sacramentum Creatori suo ac nostro reconciliandi, maiori peccatorum mole onerantes, in profundum iniquitatis barathrum nefarie submergunt, nonnullorum Venerabilium Fratrum Nostrorum Sanctae Romanae Ecclesiae Cardinalium, et aliquorum in theologia Magistrorum consilio desuper adhibito, accedentibus quoque iteratis plurium Episcoporum supplicationibus, hac Nostra in perpetuum valitura sanctione, quemadmodum a pluribus Episcopis per synodales suas constitutiones iam factum esse novimus, omnibus et singulis sacerdotibus, tam saecularibus quam regularibus cuiuscumque Ordinis, ac dignitatis, tametsi alioquin ad confessiones excipiendas approbatis, et quovis privilegio et indulto, etiam speciali expressione, et specialissima nota et mentione digno suffultis, auctoritate Apostolica, et Nostrae potestatis plenitudine interdicimus et prohibemus, ne aliquis eorum, extra casum extremae necessitatis, nimirum in ipsius mortis

articulo, et deficiente tunc quocumque alio sacerdote qui confessarii munus obire possit, confessionem sacramentalem personae complicis in peccato turpi atque inhonesto, contra sextum Decalogi praeceptum commisso, excipere audeat, sublata propterea illi ipso iure quacumque auctoritate et iurisdictione ad qualemcumque personam ab huiusmodi culpa absolvendam; adeo quidem, ut absolutio, si quam impertierit, nulla atque irrita omnino sit, tanquam impertita a sacerdote, qui iurisdictione ac facultate ad valide absolvendum necessaria privatus existit, quam ei per praesentes has Nostras adimere intendimus; et nihilominus, si quis confessarius secus facere ausus fuerit, maioris quoque excommunicationis poenam, a qua absolvendi potestatem Nobis solis, Nostrisque Successoribus dumtaxat reservamus, ipso facto incurrat.

§ 5. Declarantes etiam, et decernentes, quod nec etiam in vim cuiuscumque Iubilaei, aut etiam Bullae, quae appellatur Cruciatae Sanctae, aut alterius cuiuslibet indulti, confessionem dicti complicis huiusmodi quisquam valeat excipere, eique sacramentalem absolutionem elargiri; cum ad hunc effectum, et in hoc casu, nullus confessarius, utpote qui in huiusmodi peccati, et poenitentis genere, iurisdictione, ut praefertur, careat, et absolvendi facultate a Nobis privatus existat, habendus sit pro confessario legitimo, et approbato. Non obstantibus Constitutionibus, et Ordinationibus Apostolicis, praesertim quae nuncupantur Cruciatae Sanctae, vel Iubilaei Universalis et plenarii, necnon quibusvis Ecclesiarum, et monasteriorum, et Ordinum quorumlibet, quorum ipsi sacerdotes fuerint, etiam iuramento, confirmatione Apostolica, vel quavis firmitate alia roboratis, statutis, et consuetudinibus, privilegiis quoque, indultis, et Litteris Apostolicis, sub quibuscumque tenoribus et formis, ac cum quibusvis clausulis, et decretis, etiam motu proprio, aut alias quomodolibet concessis, etiam iteratis vicibus approbatis, et innovatis; quibus omnibus, eorum tenores praesentibus pro expressis habentes, hac vice dumtaxat specialiter et expresse derogamus, ceterisque contrariis quibuscumque.

§ 6. Volumus demum ac praecipimus, ut omnes locorum Ordinarii, tam praesentes quam futuri pro tempore existentes, in approbatione confessariorum, tam praedictam Constitutionem Gregorii Praedecessoris, quam praesentem hanc Nostram, ab omnibus sacerdotibus approbandis attente legi et accurate observari curent, moneantque eos in Domino atque hortentur, ut sacrum ministerium ipsorum fidei commissum summa animi innocentia, morum puritate, iudicii integritate peragant, exhibeantque semetipsos ut ministros Christi et dispensatores mysteriorum Dei. Memores praeterea sint se locum tenere, ac vices obire summi atque aeterni Sacerdotis, qui sanctus, innocens, impollutus, per Spiritum Sanctum semetipsum obtulit immaculatum Deo, ut emundaret conscientiam nostram ab operibus mortuis, ad serviendum Deo

viventi: sedulo igitur studeant diligenterque caveant, ne quaerentibus et pulsantibus eorum culpa caelum claudatur; ne deperditae oves ad ovile dominicum redire properantes, eorum manibus ferarum dentibus dilaniandae tradantur; ne prodigi filii egentes et saucii ad coelestem Patrem revertentes, nefaria eorum improbitate, gravioribus peccatorum vulneribus, dum adhuc in via sunt, confodiantur.

§ 7. Ut autem praesentes Litterae ad omnium notitiam facilius deveniant, et nemo illarum ignorantiam allegare valeat, volumus illas seu earum exempla ad valvas Ecclesiae Lateranensis, et Basilicae Principis Apostolorum, necnon Cancellariae Apostolicae, Curiaeque Generalis in Monte Citatorio, ac in Acie Campi Florae de Urbe, ut moris est, affigi et publicari, sicque publicatas et affixas, omnes et singulos, quos illae concernunt, perinde arctare et afficere, ac si unicuique eorum nominatim et personaliter intimatae fuissent: utque ipsarum praesentium Litterarum transumptis seu exemplis, etiam impressis, manu alicuius Notarii publici subscriptis, et sigillo alicuius personae in ecclesiastica dignitate constitutae munitis, eadem prorsus fides, tam in iudicio quam extra illud, ubique adhibeatur, quae ipsis praesentibus adhiberetur, si forent exhibitae vel ostensae.

§ 8. Nulli ergo omnino hominum liceat paginam hanc Nostrae voluntatis, sanctionis, praecepti, mandati et derogationis infringere, vel ei ausu temerario contraire. Si quis autem hoc attentare praesumpserit, indignationem Omnipotentis Dei, ac BB. Petri et Pauli Apostolorum eius se noverit incursurum. Datum Romae apud S. Mariam Maiorem Anno Incarnationis Dominicae millesimo septingentesimo quadragesimo primo, Kalendis Iunii, Pontificatus Nostri Anno I.

X. Sub-Datarius.

Pro D. Card. Passioneo
Caietanus Amatus.

Constitutio Gregorii PP. XV "Universi," 30 Augusti 1622

Universi Dominici gregis curam, quamquam immeriti, caelesti dispositione gerentes, sedulo invigilare tenemur, ut ab omnibus pravis contagiis conservetur immunis, multoque maiori studio providere, ut omnis pestis ab iis avertatur, quibus alios sanandi officium est commissum, ne quod Evangelica scripta Nos admonent, sale infatuato non sit, in quo saliatur, et ad nihilum prosit ultra, nisi ut mittatur foras, et conculcetur ab hominibus.

§ 1. Quoniam autem a Romanis Pontificibus Praedecessoribus nostris quibusdam in locis provisum fuit, ut impium, ac nefandum scelus, quod non solum inter Christifideles non esse, sed nec etiam nominari debet, procul ab iis arceatur, videlicet, ut aliquis Sacerdos

as sacras audiendas confessiones deputatus, sacrosancto Poenitentiae Sacramento, solicitando poenitentes ad turpia, abutatur, ac pro medicina venenum, pro pane aspidem porrigat, et ex caelesti medico infernalis veneficus, ex patre spirituali proditor execrabilis animarum reddatur: idcirco Nos ea, quae his perniciosissimis diaboli insidiis arcendis certis locis salubriter constituta sunt, ut nullibi desiderentur, quantum ex alto conceditur, providen. duximus.

§ 2. Alias siquidem a fel. rec. Pio Papa Quarto Praedecessore nostro emanarunt literae tenoris subsequentis, videlicet: *Pius Papa Quartus Venerabili Fratri, Archiepiscopo Hispalen. in Regnis Hispaniarum haereticae pravitatis Inquisitori generali. Cum sicut nuper, non sine animi nostri molestia, accepimus, diversos Sacerdotes in Regnis Hispaniarum, atque etiam in eorum Civitatibus, et Dioecesibus curam animarum habentes, sive eam pro aliis exercentes, aut alias audiendis confessionibus poenitentium deputati, in tantum proruperint iniquitatem, ut Sacramento Poenitentiae in actu audiendi confessiones abutantur, nec illi, et qui id instituit Domino Deo, et Salvatori nostro Jesu Christo iniuriam facere vereantur: mulieres videlicet poenitentes ad actus inhonestos, dum earum audiunt confessiones alliciendo, et provocando, seu allicere, et provocare tentando, et procurando, ac loco earum per Sacramentum huiusmodi Creatori nostro reconciliationis, graviori peccatorum mole eas onerando, et in manibus Diaboli tradendo, in Divinae Maiestatis offensam, et animarum perniciem, et Christifidelium scandalum non modicum.*

§ I. *Nos in animum inducere nequeuntes, quod qui de Fide Catholica recte sentiunt, Sacramentis in Ecclesia Dei institutis abutantur, aut illis iniuriam faciant, fraternitati tuae, de cuius eximia pietate, virtute, atque doctrina plurimum in Domino confidimus, per praesentes committimus, et mandamus, quatenus per te, vel per alium, seu alios a te deputandum, seu deputandos contra omnes, et singulos Sacerdotes dictorum Regnorum, ac illarum Civitatum, et Dioecesum de praemissis quomodolibet diffamatos, tam saeculares, quam quorumvis etiam exemptorum, ac Sedi Apostolicae immediate subiectorum Ordinum Regulares, cuiuscumque dignitatis, status, gradus, ordinis, conditionis, et praeeminentiae existant, tam super praemissis, quam super Fide Catholica, et quid de ea sentiant, diligenter inquiras, et iuxta facultatum tibi contra haereticos, aut de haeresi quovis modo suspectos a Sede Apostolica concessarum continentiam, et tenorem procedas, ac culpabiles repertos iuxta excessuum suorum qualitatem, prout iuris fuerit, punias, eos etiam si, et prout de iure fuerit faciendum, debita praecedente degradatione saecularis Iudicis arbitrio puniendos tradendo.*

§ II. *Non obstantibus, etc.*

§ 3. Igitur, ut literae praedictae perpetuis futuris temporibus, et

ubique locorum inviolabiliter observentur, Motu proprio, et ex certa scientia, ac matura deliberatione nostra, ac de consilio Venerabilium fratrum nostrorum S. R. E. Cardinalium contra haereticam pravitatem generalium Inquisitorum praeinsertas literas huiusmodi, ac omnia, et singula in eis contenta Apostolica auctoritate tenore praesentium approbamus, et confirmamus, illisque omnibus, et singulis inviolabilis Apostolicae firmitatis robur adiicimus, illasque non solum in praedictis Hispaniarum Regnis, sed in quibusvis Christiani Orbis partibus firmiter, et inviolabiliter observari praecipimus, et mandamus.

§ 4. Ac praeterea ne in futurum de poena his delinquentibus imponenda, et de modo contra eosdem procedendi ab aliquo dubitari possit, statuimus, decernimus, et declaramus, quod omnes, et singuli Sacerdotes tam seculares, quam quorumvis, etiam quomodolibet exemptorum, ac Sedi Apostolicae immediate subiectorum Ordinum, Institutorum, Societatum, et Congregationum Regulares cuiuscumque dignitatis, et praeeminentiae, aut quovis privilegio muniti existant, qui personas, quaecumque illae sint, ad inhonesta, sive inter se, sive cum aliis quomodolibet perpetranda in actu Sacramentalis confessionis, sive antea, sive post immediate, seu occasione, vel praetextu confessionis huiusmodi etiam ipsa confessione non sequuta, sive extra occasionem confessionis in Confessionario, aut in loco quocumque, ubi confessiones Sacramentales audiuntur, seu ad confessionem audiendam electo, simulantes ibidem confessiones audire, sollicitare, vel provocare tentaverint, aut cum eis illicitos, et inhonestos sermones, sive tractatus habuerint, in officio Sanctae Inquisitionis severissime, ut infra, puniantur. Et praeterea omnes haereticae pravitatis Inquisitores, et locorum Ordinarios omnium Regnorum, Provinciarum, Civitatum, Dominiorum, et locorum universi Orbis Christiani in suis quemque Dioecesibus, et Territoriis per has nostras literas, etiam privative quoad omnes alios specialiter, ac perpetuo Iudices delegamus, ut super his contra praedictos, simul, vel separatim in omnibus, prout in causis fidei, iuxta Sacrorum Canonum formam, necnon officii Inquisitionis huiusmodi Constitutiones, privilegia, consuetudines, et decreta diligenter inquirant, et procedant; et quos in aliquo ex huiusmodi nefariis excessibus culpabiles repererint, in eos pro criminum qualitate, et circumstantiis, suspen. ab executione ordinis, privationis beneficiorum, dignitatum, et officiorum quorumcumque, ac perpetuae inhabilitatis ad illa, necnon vocis activae, et passivae, si regulares fuerint, exilii, damnationis ad triremes, et carceres etiam in perpetuum absque ulla spe gratiae, poenas decernant, eos quoque si pro delicti enormitate graviores poenas meruerint, debita praecedente degradatione, Curiae seculari puniendos tradant.

§ 5. Dantes etiam facultatem Venerabilibus Fratribus Nostris S. R. E. Cardinalibus generalibus Inquisitoribus, ne delictum tam enorme,

et Ecclesiae Dei tam perniciosum remaneat, ob probationum defectum, impunitum, cum difficilis sit probationis, testibus etiam singularibus concurrentibus, praesumptionibus, indiciis, et aliis adminiculis, delictum probatum esse arbitrio suo iudicandi, et Curiae seculari, ut praefertur, reum tradendum esse, pronunciandi.

§ 6. Non obstan. omnibus, quae dictus Praedecessor in suis literis praedictis voluit non obstare, caeterisque contrariis quibuscumque.

§ 7. Mandantes omnibus Confessariis, ut suos poenitentes, quos noverint fuisse ab aliis, ut supra sollicitatos, moneant de obligatione denunciandi sollicitantes, seu ut praefertur, tractantes, Inquisitoribus, seu locorum Ordinariis praedictis: quod si hoc officium praetermiserint, vel poenitentes docuerint non teneri ad denunciandum Confessarios sollicitantes, seu tractantes, ut supra, iidem locorum Ordinarii, et Inquisitores illos pro modo culpae punire non negligant.

§ 8. Volumus autem, etc.

DOCUM. VI.

Ex Constitutione Pauli PP. III "Altitudo," 1 Iunii 1537.

. . . Sane cum sicut, non sine grandi et spirituali mentis nostrae laetitia, accepimus, quamplures incolae occidentalis et meridionalis Indiae, licet divinae sint legis expertes, S. Spiritu tamen cooperante, illustrati, errores, quos hactenus observarunt, penitus ab eorum mentibus et cordibus abiecerint, ac fidei catholicae veritatem et S. Ecclesiae unitatem amplecti, et secundum ritum eiusdem Romanae Ecclesiae vivere desiderent et proponant. . . . Super eorum vero matrimoniis hoc observandum decernimus, ut qui ante conversionem plures iuxta eorum mores habebant uxores, et non recordantur quam primo acceperint, conversi ad fidem, unam ex illis, accipiant, quam voluerint, ut cum ea matrimonium contrahant per verba de praesenti, ut moris est; qui vero recordantur quam primo acceperint, aliis dimissis, eam retineant. Ac eis concedimus, ut coniuncti etiam in tertio gradu tam consanguineitatis, quam affinitatis, non excludantur a matrimoniis contrahendis donec huic S. Sedi super hoc aliud visum fuerit statuendum. . .

DOCUM. VII

Constitutio S. Pii PP. V "Romani Pontificis," 2 Augusti 1571

Romani Pontificis aequa et circumspecta providentia, ne ea quae pro salubri Indorum noviter ad fidem conversorum directione sanciri

debent et terminari, alicuius haesitationis scrupulo subiaceant, declarationibus et aliis opportunis consuevit providere remediis. Cum itaque, sicut accepimus, Indis in sua infidelitate manentibus plures permittantur uxores, quas ipsi etiam levissimis de causis repudiant, hinc factum est quod recipientibus baptismum permissum sit permanere cum ea uxore, quae simul cum marito baptizata existit; et quia saepenumero contingit illam non esse primam coniugem, unde tam ministri quam Episcopi gravissimis scrupulis torquentur, existimantes illud non esse verum matrimonium; sed quia durissimum esset separare eos ab uxoribus, cum quibus ipsi Indi baptismum susceperunt, maxime quia difficillimum foret primam coniugem reperire: ideo Nos, statui dictorum Indorum paterno affectu benigne consulere, atque ipsos Episcopos et ministros ab huiusmodi scrupulis eximere volentes, motu proprio et ex certa scientia Nostra, ac apostolicae potestatis plenitudine, ut Indi, sic ut praemittitur baptizati, et in futurum baptizandi, cum uxore, quae cum ipsis fuerit baptizata et baptizabitur, remanere valeant, tanquam cum uxore legitima, aliis dimissis, apostolica auctoritate, tenore praesentium, declaramus, matrimoniumque huiusmodi inter eos legitime consistere *etc.*

DOCUM. VIII

Constitutio Gregorii PP. XIII "Populis," 25 Ianuarii 1585

Populis ac nationibus nuper ex gentilitatis errore ad fidem catholicam conversis expedit indulgere circa libertatem contrahendi matrimonia, ne homines, continentiae servandae minime assueti, propterea minus libenter in fide persistant, et alios illorum exemplo ab eius perceptione deterreant. Quoniam igitur saepe contingit multos utriusque sed praecipue virilis sexus infideles, post contracta gentili ritu matrimonia, ex Angola, Aethiopia, Brasilia, et aliis Indicis regionibus, ab hostibus captos, a patriis finibus et propriis coniugibus in remotissimas regiones exterminari, adeo ut tam ipsi, captivique qui in patria remanent, si postea ad fidem convertantur, coniuges infideles tam longo locorum intervallo disiunctos, an sine contumelia Creatoris secum cohabitare velint, ut par est, monere nequeant, vel quia interdum ad hostiles et barbaras provincias ne nuntiis quidem accessus pateat, vel quia ignorent prorsus in quas regiones fuerint transvecti, vel quia itineris longitudo magnam afferat difficultatem: idcirco Nos, attendentes huiusmodi connubia inter infideles contracta, vera quidem, non tamen adeo rata censeri, ut necessitate suadente dissolvi non possint, talium gentium infirmitatem paterna pietate miserati, universis et singulis dictorum locorum Ordinariis et parochis, et presbyteris Societatis Iesu ad

confessiones audiendas ab eiusdem Societatis Superioribus approbatis et ad dictas regiones pro tempore missis vel in illis admissis, plenam auctoritate Apostolica, tenore praesentium, concedimus facultatem dispensandi cum quibuscumque utriusque sexus Christifidelibus incolis dictarum regionum et serius ad fidem conversis qui ante baptisma susceptum matrimonium contraxerunt, ut eorum quilibet, superstite coniuge infideli, et eius consensu minime requisito, aut responso non expectato, matrimonia cum quovis fideli alterius etiam ritus contrahere et in facie Ecclesiae solemnizare, et in eis postea carnali copula consummatis quoad vixerint remanere licite valeant: dummodo constet etiam summarie et extraiudicialiter, coniugem, ut praefertur, absentem moneri legitime non posse, aut monitum intra tempus in eadem monitione praefixum suam voluntatem non significasse; quae quidem matrimonia, etiamsi postea innotuerit coniuges priores infideles suam voluntatem iuste impeditos declarare non potuisse, et ad fidem etiam tempore contracti secundi matrimonii conversos fuisse, nihilominus rescindi nunquam debere, sed valida et firma, prolemque inde suscipiendam legitimam fore decernimus. Non obstantibus *etc.*

APPENDIX II

SUMMARY OF CENSURES AND OTHER PENALTIES INCURRED AUTOMATICALLY (*latæ sententiæ*)

I. EXCOMMUNICATIONS

A. Excommunications Reserved in a Most Special Manner to the Apostolic See

(1) For casting away, carrying off, or keeping for evil purpose the Blessed Sacrament (Canon 2320).

(2) For laying violent hands on the person of the Roman Pontiff (Canon 2343, § 1).

(3) For giving absolution or pretended absolution of one's own accomplice in a sin of impurity (Canon 2367).

(4) For direct violation of the seal of confession by confessor (Canon 2369, § 1).

(5) For several violations of the laws on the election of the Roman Pontiff (Canon 2330).

B. Excommunications Reserved in a Special Manner to the Apostolic See

(1) For apostasy, heresy, schism (Canon 2314, §§ 1-2).

(2) For suspicion of heresy when the persons do not amend within six months from date of admonition (Canon 2315).

(3) For publishing books of heretics, schismatics, or apostates defending heresy, schism, apostasy; for defending, reading or keeping the aforesaid books or books condemned by name by Apostolic letters (Canon 2318, § 1).

(4) For pretending to say Mass or hear Sacramental Confession by one who is not an ordained priest (Canon 2322, § 1).

(5) For appealing to an Œcumenical Council against the Supreme Pontiff (Canon 2332).

(6) For having recourse to the civil authorities to impede the acts of the Holy See or its Legates; injuring or terrorizing persons for reason of such acts (Canon 2333).

(7) For the issuance of laws, precepts or orders violating the

rights and freedom of the Church; recourse to civil authorities for the purpose of interfering with ecclesiastical jurisdiction (Canon 2334).

(8) For instituting suit in the civil courts against a Cardinal, Legate of the Holy See, major official of the Roman Curia, or one's own Ordinary (Canon 2341).

(9) For laying violent hands on the person of a Cardinal, Legate of the Holy See, patriarch, archbishop, or bishop (Canon 2343, § 2).

(10) For the usurpation and retention of goods and rights of the Papacy (Canon 2345).

(11) For the forgery of documents of the Apostolic See and deliberate use of such documents (Canon 2360).

(12) For the false denunciation of a confessor of the crime of solicitation (Canon 2363).

C. Excommunication Reserved Simply to the Apostolic See

(1) In profiteering from indulgences (Canon 2327).

(2) For joining the Freemasons or similar sects (Canon 2335).

(3) For absolving without faculties from excommunication reserved either in a most special or in a special manner to the Apostolic See (Canon 2338, § 1).

(4) For assisting or favoring an *excommunicatus vitandus* in the crime for which he was excommunicated; for communicating with such a person by admitting him to divine services (Canon 2338, § 2).

(5) For instituting a suit in the civil courts against a bishop, an abbot or prelate *nullius,* or a supreme head of religious organization of papal law (Canon 2341).

(6) For the violation of the enclosure of nuns; in the case of nuns, for leaving enclosure illegally (Canon 2342, § 1).

(7) For the violation of the enclosure of monasteries of religious men in solemn vows (Canon 2342, § 2).

(8) For the usurpation of ecclesiastical goods (Canon 2346).

(9) For fighting a duel, for issuing or accepting a challenge to the same, and for assisting, favoring, or purposely witnessing it (Canon 2351).

(10) In the case of clerics in sacred orders and religious in solemn vows, and their partners, for attempting marriage (Canon 2388, § 1).

(11) For the commission of simony in ecclesiastical offices, benefices, or dignities (Canon 2392).

(12) For destroying, hiding, carrying off, or altering a document of the episcopal Curia during a vacancy of the episcopal see (Canon 2405).

D. Excommunications Reserved to the Ordinary

(1) For contracting marriage before a non-Catholic minister, or making an agreement that a child or children shall be educated outside the Catholic Church, or offering a child for baptism to a non-Catholic minister; parents and those taking the parents' place for having children educated in a non-Catholic religion (Canon 2319, § 1).

(2) For making, selling, distributing, or exposing false relics for public veneration (Canon 2326).

(3) For laying violent hands on clerics or religious (Canon 2343, § 4).

(4) For the effective procuring of abortion (Canon 2350, § 1).

(5) For apostasy from a laical or a non-exempt religious organization (Canon 2385).

(6) For marriage by a religious bound to perpetual simple vows (Canon 2388).

E. Non-Reserved Excommunications

(1) Authors and publishers of books of the Bible for publishing them without permission (Canon 2318, § 2).

(2) For forcing the ecclesiastical burial of infidels, apostates, heretics, schismatics, or excommunicated or interdicted persons whose excommunication or interdict has been pronounced by a competent ecclesiastical superior (Canon 2339).

(3) For the alienation of ecclesiastical goods without the required *beneplacitum Apostolicum* (Canon 2347, n. 3).

(4) For forcing a man to embrace the clerical state, and forcing a man or woman to enter the religious state (Canon 2352).

(5) For neglecting to denounce the confessor who is guilty of solicitation (Canon 2368, §2).

II. INTERDICTS

A. Interdict Specially Reserved to the Apostolic See

Moral persons appealing to an Œcumenical Council against the Supreme Pontiff (Canon 2332).

B. Interdict Reserved to the Ordinary

Persons who grant ecclesiastical burial to infidels, apostates, heretics, schismatics, or excommunicated or interdicted persons after

a declaratory or condemnatory sentence of excommunication or interdict (Canon 2339).

C. Non-Reserved Interdicts

(1) For celebrating or making others celebrate divine services in interdicted places; for admitting clerics excommunicated, interdicted, or suspended by declaratory or condemnatory sentence to the celebration of divine services forbidden by the censure (Canon 2338, § 3).

(2) The interdict against persons who are the cause of a local interdict or of an interdict on a college or community (Canon 2338, § 4).

III. SUSPENSIONS

A. Suspensions Reserved to the Apostolic See

(1) For consecrating a bishop without Apostolic mandate (Canon 2370).

(2) For the reception of orders through simony; for the administration or reception of other sacraments through simony (Canon 2371).

(3) For the reception of orders from a notorious apostate, heretic or schismatic, or from one who is excommunicated, suspended or interdicted by declaratory or condemnatory sentence (Canon 2372).

(4) For ordaining a non-subject without dimissorial letters, or one's own subject without testimonial letters or without a canonical title, or a religious domiciled in another diocese (Canon 2373).

(5) The suspension of religious in sacred orders whose profession was declared invalid for reason of deceit (Canon 2387).

(6) The suspension of chapters and communities and others concerned who admit elected, presented or nominated persons to offices, benefices or dignities, before they have obtained and exhibited the letters of appointment (Canon 2394, n. 3).

B. Suspensions Reserved to the Ordinary

(1) For suing in the civil court another cleric or religious without permission of local Ordinary (Canon 2341).

(2) The suspension of religious in sacred orders becoming a fugitive from his organization (Canon 2386).

C. Non-Reserved Suspensions

(1) For hearing confessions without jurisdiction, or absolving from reserved sins without faculties (Canon 2366).

(2) For maliciously presenting oneself for ordination without dimissorials, or before the canonical age, or without observing due sequence in the reception of orders (Canon 2374).

(3) For resigning an ecclesiastical office, benefice, or dignity into the hands of laymen (Canon 2400).

(4) Abbots and prelates *nullius* for neglecting to receive the abbatial blessing within the prescribed time (Canon 2402).

(5) Vicar-capitular (administrator of vacant diocese) for issuing dimissorial letters in violation of the precept of Canon 958, n. 3 (Canon 2409).

(6) Religious superiors for unlawfully sending their subjects for ordination to a strange bishop (Canon 2310).

APPENDIX III

SUMMARY OF THE DOCUMENTS OF THE ROMAN PONTIFF AND THE SACRED CONGREGATIONS AFFECTING THE LAWS OF THE CODE.

(1) Code of Canon Law Only Authoritative Text-Book of Canon Law.

A Decree of the Sacred Congregation of Seminaries and Universities, August 7, 1917, ordered that the Code of Canon Law be adopted as the text-book of Canon Law in all ecclesiastical universities and schools of Canon Law. The disposition of the subject matter of Canon Law, as contained in the books, titles and chapters of the Code, is to be faithfully followed. If the professor desires the students to use some book as a help to the study of the Code, the book must be one that adapts itself to the order of subjects as given in the Code (*Acta Ap. Sedis,* IX, 439).

(2) Committee for Authentic Interpretation of the Code.

The *Motu Proprio* of Pope Benedict XV, September 15, 1917, established the Committee for the Authentic Interpretation of the Code. The Sacred Congregations shall not issue new General Decrees unless the needs of the Universal Church call for them. Otherwise the Sacred Congregations have the duty to urge the faithful observance of the Code, and to issue Instructions by which the precepts of the Code are explained and their observance made effective. If a new General Decree becomes necessary and it disagrees with the Code, the Sacred Congregation shall inform the Supreme Pontiff of the fact. After the Supreme Pontiff has approved the Decree, it shall be submitted to the Sacred Congregation of the Council, which shall adapt the Decree to the form of the Canons of the Code. If the new Decree differs from some precept of the Code, the Sacred Congregation of the Council shall indicate what Canon is to be replaced by the new Decree; if the Decree covers a point on which the Code is silent, the Sacred Congregation shall indicate where the new Canon is to be placed, and it shall get the number of the Canon immediately preceding with the annotation *bis, ter,* etc. (*Acta Ap. Sedis,* IX, 483).

(3) Various Declarations on Former Laws Abolished by the Code.

(*a*) Are the dispositions of the Council of Baltimore in reference to the right of nominating the administrator of a vacant diocese still in force, or have they been abolished by the Code? *Answer:* They have been abolished.

Is Canon 427 to be applied in the case of vacancy of a bishopric (i.e., whether the diocesan consultors elect an administrator)? *Answer:* Yes, Canon 427 applies; if the peculiar circumstances at present make the application of Canon 427 impossible, the Sacred Consistorial Congregation shall issue temporary instructions as to the manner of appointment of the diocesan administrator, but the bishop shall have absolutely no right to nominate a man who at his death shall take the office of administrator (Committee for the Authentic Interpretation of the Code, November 24, 1918; *Acta Ap. Sedis,* XI, 75).

Because of the special circumstances obtaining in the United States of North America, the Sacred Consistorial Congregation issued a Decree, which was to be in force for three years, stating that in all dioceses where there were not at least five or six diocesan consultors the archbishop—or, in case of vacancy of the archbishopric, the senior suffragan bishop of the province—shall nominate the diocesan administrator, which nomination is to be submitted for ratification to the Apostolic Delegate (Sacred Consistorial Congregation, February 22, 1919; *Acta Ap. Sedis,* XI, 75). This Decree was extended to the dioceses of Canada and Newfoundland by Decree of the Sacred Consistorial Congregation, May 8, 1919 (*Acta Ap. Sedis,* XI, 233).

(*b*) Are the Decrees of the Sacred Congregation of Bishops and Regulars, July 18, 1902, *ad* I, and January 15, 1903, *ad* I and II, in reference to the manner of making simple and solemn profession in orders of nuns in accordance with the Decree "Perpensis" of May 3, 1902 (cfr. *Acta S. Sedis,* XXXV, 31), still in force after the promulgation of the Code, which demands that only temporary vows be taken before solemn profession? *Answer:* No, they are abolished. The Sacred Congregation further declares that all those rites and ceremonies which indicate the perpetuity of the religious state must be reserved until solemn profession; for the profession of the temporary vows it suffices, in accordance with Canon 577, that it be accepted by the legitimate superior in person or by a delegate; the individual constitutions must be consulted to ascertain what superior is entitled to accept the profession (Sacred Congregation of Religious, July 10, 1919; *Acta Ap. Sedis,* XI, 323).

(*c*) Does Canon 824 abolish the Decree of the Sacred Congregation of the Council, October 15, 1915 (*Acta Ap. Sedis,* VII, 401), in

which it was forbidden to receive any remuneration, even for extrinsic labor or inconvenience, for the saying of the second or third Mass on All Souls' Day? *Answer:* The Decree is abolished (Committee for the Authentic Interpretation of the Code, December 13, 1923; *Acta Ap. Sedis,* XVI, 116).

(*d*) Does Canon 838 abolish the law of a Provincial Council by which the priests are forbidden to transfer Mass stipends to priests outside their own diocese without permission of their Ordinary? *Answer:* In reference to foundation Masses and Masses *ad instar manualium* and Masses given for the benefit of a charitable institute (*causa pia*), the law of the Provincial Council remains in force; in reference to other Mass stipends, Canon 838 applies. This Canon permits priests to transfer manual Mass stipends to priests outside the diocese, which permission of the common law cannot be taken away or restricted by authorities inferior to the Holy See (Sacred Congregation of the Council, February 19, 1921; *Acta Ap. Sedis,* XIII, 228).

(*e*) Does Canon 924 abolish the Decree of Pope Alexander VII, February 6, 1657, which has been renewed by each Supreme Pontiff at the beginning of his Pontificate and lastly by Pope Benedict XV, September 5, 1914, and which ordains that the so-called Apostolic Indulgences attached to prayer beads and other religious objects are granted in such a manner that they do not profit other persons except those for whom the objects were blessed or to whom they were first given, and that the indulgences cannot be gained if these objects are given to others? *Answer:* Those Decrees are abolished, and the sacred objects lose their indulgences only when the blessed objects are sold or destroyed (Sacred Penitentiary, February 18, 1921; *Acta Ap. Sedis,* XIII, 164).

(*f*) Is the Constitution "Provida," January 18, 1906, abolished because it is a particular law opposed to the precept of Canon 1099 (cfr. Canon 6, n. 1), or is it a privilege or indult which, in accordance with Canon 4, remains intact? *Answer:* The Constitution is abolished (Committee for the Authentic Interpretation of the Code, March 30, 1918; *Archiv für katholisches Kirchenrecht,* IC, 61). The Code rules that the marriage of a Catholic contracted outside the Church (before a non-Catholic minister or justice of the peace) is invalid; the above-mentioned Constitution had granted that the marriage of a non-Catholic with a Catholic outside the church by Germans within Germany was valid, though illicit.

(*g*) The Holy See was requested to declare what course of action the priest should take who assists at a marriage of a Catholic and non-Catholic, in which the promises are not made? *Answer:* He must in all things conform to the Code of Canon Law (Sacred Congrega-

tion of the Holy Office, November 26, 1919; *Archiv für katholisches Kirchenrecht,* C, 28). Canon 1061 states that the Church does not dispense with the impediments of mixed religion or disparity of cult, unless the promises are made. Canon 1102 prescribes that the priest must ask for and receive the consent. Contrary Decrees and Indults of the Holy See are abolished.

(*h*) Is Canon 1252 on the days of abstinence and fast obligatory everywhere, notwithstanding particular laws, etc.? *Answer:* Canon 1252 is obligatory (Committee for the Authentic Interpretation of the Code, January 3, 1918; *Archiv für katholisches Kirchenrecht,* IC, 63).

(*i*) Are holydays of obligation which are kept in some country or diocese by reason of particular laws, ancient custom or special concession of the Holy See, but which are not among the days enumerated by the Code in Canon 1247 as holydays of obligation, abolished by the Code in so far as the duty of hearing Mass and abstaining from servile work is concerned? *Answer:* Those days are abolished as holydays of obligation (Committee for the Authentic Interpretation of the Code, February 17, 1918; *Acta Ap. Sedis,* X, 170).

(4) Various Declarations on Laws Not Abolished by the Code.

(*a*) Are the precepts of the Holy See with regard to Modernism, contained in the Constitution "Pascendi Dominici Gregis" and the *Motu Proprio* "Sacrorum Antistitum," abolished by the Code, since no mention is made of them in the Code? *Answer:* They are not abolished, but remain in force until the Holy See shall declare otherwise, but they could not be incorporated in the Code because of their transitory character (Sacred Congregation of the Holy Office, March 22, 1918; *Acta Ap. Sedis,* X, 136).

(*b*) Are the precepts of the Decree "Inter reliquas," of the Sacred Congregation of Religious, January 1, 1911, with reference to the religious forced by the civil law to undergo military training, still in force. *Answer:* They are in force.

Must novices who are liable for military training take temporary vows at the end of the novitiate in the manner prescribed by Canon 574? *Answer:* No, they shall make temporary vows to last until they begin the military service (Sacred Congregation of Religious, July 15, 1919; *Acta Ap. Sedis,* XI, 321).

(*c*) The Decree forbidding priests to promote or favor dancing, and to be present if dances are arranged by laymen, was passed specially for the United States. In many places in the U. S. the pastor and people together arranged entertainments in the parish hall for the

purpose of raising funds for the parish as well as of affording recreation for the Catholic people and their friends under the supervision of the priest. Dances were one of the forms of entertainment. The Third Plenary Council of Baltimore forbade dinners with balls for the purpose of raising money for the parish or other good cause. It seems that the plain dances were not considered in many dioceses to be against the prohibition of the Council of Baltimore. The Decree of March 3, 1916, forbids the priests to promote or favor (*ne promoveant, ne foveant*) dances for the benefit of the parish, and forbids the priests to be present if they are arranged by laymen (Sacred Consistorial Congregation, March 31, 1916; *Acta Ap. Sedis,* VIII, 147).

Canon 140 forbids clerics to be present at shows, dances and celebrations which are unbecoming to the clerical state or where their presence causes scandal. Inasmuch as a particular law which is not contrary to the Code is not abolished by the Code (cfr. Canon 22), the Decree of March 31, 1916, on dancing remains in force, for though Canon 140 forbids the presence of the priest at dances and other amusements only when they are unbecoming to the clerical state or cause scandal, the aforesaid Decree cannot be considered contrary to the Code; it is rather an extension of the prohibition contained in the Third Plenary Council of Baltimore.

(*d*) The prohibition by the former law of all discussion as to whether the Chinese Rites are mere civil practices or superstitious religious rites, is not abolished but remains in force (Holy Office, July 13, 1930; *Acta Ap. Sedis,* XXII, 344).

(5) Retroactive Force of Laws.

(*a*) The Holy See was asked to decide whether the prohibition of Canon 642 declaring that secularized religious cannot obtain certain offices and positions applies also to religious who were secularized before the promulgation of the Code? *Answer:* Canon 642 applies also to religious secularized before the promulgation of the Code (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 575). Canon 642 is a reënactment of the Decree of the Sacred Congregation of Religious, June 15, 1909 (*Acta Ap. Sedis,* I, 523).

(*b*) The Holy See was requested to declare whether the simple perpetual vows made in religious orders of men or women before the solemn profession prior to the promulgation of the Code are subject to the former laws in reference to the manner of dismissal of those religious and the effects of the dismissal? *Answer:* Yes, they are subject to the former laws (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 476). The Code abolishes the perpetual vows after the

novitiate in all religious orders of solemn vows, and demands that the novices make temporary vows before solemn profession (cfr. Canon 574).

(*c*) In reference to impediments of marriage abolished by the Code the following questions arose:

(i) Whether spiritual relationship contracted before Pentecost, 1918, which then was an impediment of marriage but is no impediment any longer in virtue of Canon 768 (which restricts the cases of spiritual relationship as impediments of marriage), ceases automatically with the promulgation of the Code in reference to all consequences of that relationship, or whether it ceases as impediment of marriage only? *Answer:* The spiritual relationship merely ceases to be an impediment of marriage; duties arising out of that relationship (e.g., care for the spiritual interest of the godchild in Confirmation) remain (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 346).

(ii) Has the Code retroactive force with reference to the modifications introduced by the Code concerning betrothal and impediments of marriage, both impedient and diriment, so that every right acquired by valid betrothal cannot be claimed in any manner except in so far as the Code concedes, and impediments of marriage contracted prior to the Code and now abolished by the Code do not need any dispensation? *Answer:* The Code has no retroactive force (cfr. Canons 4 and 10), but betrothal and marriage are governed by the law in force at the time when these contracts were made or will be made; as to the right of action from betrothal, Canon 1017 applies (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 346). The reason is that the right of action is now modified by the Code, and all actions which are brought after the promulgation of the Code must necessarily be judged by the law of procedure of the Code.

(iii) What is to be said concerning a marriage contracted before the Code became law, and which was rendered invalid by an impediment which has been abolished by the Code? Does such a marriage become valid by the very promulgation of the Code, or does it need a dispensation, *sanatio,* etc., even after the promulgation of the Code? *Answer:* They are not automatically validated by the promulgation of the Code, but need a dispensation, *sanatio,* etc. (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 346).

(*d*) The time required for prescription against immovable ecclesiastical property by the former Canon law was forty years. In Canon 1511, the Code appoints a shorter period of thirty years. What rule must be applied to prescriptions which have already been started under the former law? The rule is that the former law applies to prescriptions which were started under the former law, except only in cases

where the difference of time stated by the former and the new law is so great that the period of time ordained by the new law has elapsed before the period of the former law has been completed (e.g., if the old law required one hundred years for prescription, the new law only thirty; now, if at the promulgation of the new law one had already fifty years of prescription under the old law, he does not have to wait fifty more years but only the thirty years of the new law counting the years from the time that the new law came into force). This rule was applied by the Sacred Roman Rota in a recent case (June 21, 1924; *Acta Ap. Sedis,* XVI, 478).

(*e*) Particular laws not contrary to the Code remain in force (cfr. Canon 22). Now, the law exempts strangers from the observance of particular laws. In some dioceses the Holy See has ordered that the abstinence during Lent be observed on Wednesdays and Fridays, instead of Fridays and Saturdays as the Code ordains. The question arose whether strangers passing through these dioceses are obliged to keep the abstinence days as observed there by special law, or whether they must keep the Fridays and Saturdays as ordained by the common law? *Answer:* They are bound to keep abstinence either on Wednesday or on Saturday, whichever they prefer (Sacred Congregation of the Council, February 9, 1924; *Acta Ap. Sedis,* XVI, 94). Hilling [1] explains the answer of the Sacred Congregation by the fact that both the common and the particular law agree in substance (two days' abstinence each week); wherefore the strangers are obliged to observe abstinence on two days, but a choice is given them between the days of the common and the particular law.

(6) The Reckoning of Time.

The reckoning of the hours of the day by the so-called zone-time (one hour's difference with every 15 degrees of longitude) may be employed for the purposes mentioned in Canon 33, § 1, provided that time is recognized as legal time in the respective country (Committee, November 10, 1925; *Acta Ap. Sedis,* XVII, 582).

(7) Domicile.

Can a woman maliciously deserted by her husband acquire, in accordance with Canon 93, a proper domicile distinct from that of her husband? *Answer:* No, unless she has obtained from the ecclesiastical judge perpetual separation or separation for an indefinite period of time (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 526).

[1] Hilling, "Codicis Juris Canonici Interpretatio," 9.

(7a) Change of Rite.

The Apostolic Delegates may grant permission to people, except priests, to change from an Oriental Rite to the Latin or vice versa, which faculty is reserved to the Holy See by Canon 98, §3 (Sacred Congregation for the Oriental Church, December 6, 1928, *Acta Ap. Sedis,* XX, 416).

(8) Precedence.

The precedence among suffragan bishops in Provincial Councils and meetings is to be determined by the day on which a bishop was raised to the episcopal dignity by the Holy See, and not from the day of promotion to the suffragan see (Committee, November 10, 1925; *Acta Ap. Sedis,* XVII, 582).

(9) Various Decrees on the Obligations of Clerics.

(*a*) Are pastors and parochial vicars of religious organizations obliged to undergo the examination, spoken of in Canon 130, before the Ordinary or his delegate, if they have made the examination before the religious superior or his delegate, spoken of in Canon 590? *Answer:* No.

If the religious superior neglects to subject the pastors and parochial vicars to the examination spoken of in Canon 590, can the local Ordinary force those religious to make the examination before himself or his delegate in accordance with Canon 130? *Answer:* Recourse must be had in that case to the Sacred Congregation of Religious (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 526).

(*b*) Does a bishop who is about to celebrate a Pontifical Mass satisfy the obligation of reciting the Canonical Hour (Tierce or None) by the recital of the prayers prescribed by the *Cæremoniale Episcoporum? Answer:* Yes, he does satisfy it.

Does the bishop satisfy the respective obligation of the Divine Office when he pontificates at Vespers or Lauds, in processions on the days of the major or minor litanies, and does not recite those parts of the office which, according to the *Cæremoniale Episcoporum,* the choir or chanters have to recite or sing? *Answer:* No, he does not satisfy the obligation, unless he is actually prevented from the recitation of those parts by some ceremony demanded by the rubrics of the *Cæremoniale Episcoporum* [Sacred Congregation of the Council, April 12, 1919, and July 9, 1921 (*in Causa Linciensi*); *Acta Ap. Sedis,* XIII, 477].

(*c*) Does the Code of Canon Law give liberty to all the secular clergy to wear a beard, and have the bishops authority to enforce the

prohibition thus far in vogue in their respective dioceses? *Answer:* No, the Code does not grant such permission (cfr. Canon 136), and the bishop may forbid it (Sacred Congregation of the Council, January 10, 1920; *Acta Ap. Sedis,* XII, 43).

(*d*) Can the bishop forbid the clerics of his diocese to engage in quiet hunting under *ipso facto* suspension? *Answer:* No, he cannot, unless there are grave and special reasons for such a severe prohibition. According to the former law, the Ordinary can absolutely forbid his clerics even the quiet hunting, and this authority is not restricted by the Code, but grave and special reasons must exist if he wants to enforce his prohibiton with so severe a penalty. This decision was given in an appeal of the priests of the Archdiocese of Gnesen-Posen, Poland, against the prohibition of the archbishop to his clergy to go hunting under pain of suspension *ipso facto.* The Sacred Congregation of the Council declared that "quiet" hunting is *per se* permitted to the clergy, and becomes unlawful only through scandal or peculiar local circumstances. In the latter case penalties may be inflicted with the prohibition of hunting, but not suspension *ipso facto.* The hunting forbidden by Canon Law is the so-called *venatio clamorosa* (Sacred Congregation of the Council, June 11, 1921; *Acta Ap. Sedis,* XIII, 498).

(*e*) The Sacred Congregation of the Council states it has ascertained that some priests who go to the mountains or seashore or spas to recuperate their health just barely discharge the duties of their state and devote the rest of the day to vain conversation and to attending theatres, dances, motion picture shows, and other spectacles which ill become the dignity of the priesthood. Some even go so far as to discard their clerical garb, and don lay dress with a view to attain greater freedom. Wherefore, the Sacred Congregation issues the following instructions to all Ordinaries:

1. Priests who desire to leave their own diocese for some time to recuperate their health, shall ask the permission of their Ordinary, specifying the dates of their departure and return and also the places where they intend to stay.
2. The Ordinaries shall inquire carefully into the reasons for which the priests ask permission to leave their diocese, and they shall also diligently consider the character and mode of life of the applicants, and grant this permission with great caution.
3. They shall also insist that their priests shall invariably choose inns or hospices which may without scandal be patronized by the ministers of God.
4. The Ordinaries shall forward as soon as possible the names of these priests to the Curia of the diocese in which the latter are

staying, and shall specify the time of absence allowed and the inn or house in which they are guests.

5. Moreover, upon arrival at their destination, the priests shall present themselves at the Curia of that place as soon as possible, or (if the circumstances prevent this) shall approach the Vicar-Forane or at least the pastor, who shall in turn report to his own Ordinary.
6. (a) The Ordinaries of places where priests are accustomed to recuperate their health, shall keep careful and attentive watch over the visiting priests, either personally or through priests entrusted with this special duty; and they shall not permit these visiting priests to celebrate the sacred rites, unless they shall have obeyed the precepts given above.
   (b) In order that these priests may be more easily kept in obedience, the Ordinaries shall appoint appropriate penalties for those who shall give any scandal, or who shall do anything whatever that is unworthy of the sacerdotal office.
   (c) They may even threaten such priests with suspension to be incurred *ipso facto,* if they attend theatres, motion picture shows, dances and other profane spectacles of this kind, or if they lay aside the clerical garb.
   (d) Finally, they may inflict on these ecclesiastics the penalties imposed by the Sacred Canons, if the priests do not obey such precepts and the other laws of the Church.
   (e) They shall make a careful report to the proper Curia of these ecclesiastics, and, if necessary, also to this Sacred Congregation.
7. In this matter, the vigilance of the Ordinaries should be extended also to religious, and, if the latter should be delinquent, they shall decree punishments in accordance with the Sacred Canons, and report the offenders to their major Superiors (July 1, 1926; *Acta Ap. Sedis,* XVIII, 312–13).

(*f*) Are the permissions required by clerics in virtue of the Decree "Docente Apostolo," November 18, 1910 (*Acta Ap. Sedis,* II, 910), to be obtained from the Holy See or from their own proper Ordinary? *Answer:* From their own Ordinary (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 344). Canon 139 deals with various secular offices and positions which clerics should not hold, and specifies the cases in which the Holy See and the Ordinary respectively may grant permission to clerics to accept such offices.

Can Cardinals, archbishops, and residential or titular bishops, in accordance with Canon 139, § 4, accept the office of senator or repre-

sentative or compete for it? *Answer:* No; but, if by the law of the country Cardinals, archbishops, or bishops are by the very fact of holding these ecclesiastical positions entitled to a seat in the senate or in the house of representatives, and the Holy See has in any way approved of such laws, they may without special permission of the Holy See fill these offices provided they attend to their ecclesiastical duties through the vicar-general or some one else. In any other case, however, the Cardinals, archbishops, and residential or titular bishops need the permission of the Holy See to hold those secular offices.

Should local Ordinaries rather discourage than encourage priests who desire to compete for the office of representative? *Answer:* They should rather discourage them from seeking office (Committee, April 25, 1922; *Acta Ap. Sedis,* XIV, 313).

(*g*) Concerning priests teaching at secular universities and other schools, the Holy See ordains that: (1) they may not accept the position without the explicit consent of their own Ordinary; (2) the Ordinary may permit the acceptance of the position by those priests only who by their devout life and their knowledge are a good example to the other professors in school and outside of it; (3) the proper Ordinary may allow his priest to accept a position in a school in another diocese, but the priest may be recalled at will of his own Ordinary or requested to leave by the Ordinary of the diocese where the school is located; (4) the proper Ordinary shall not allow his priests to accept a teaching position in another diocese without first informing the Ordinary of the place and getting his permission; (5) the priest of another diocese about to begin teaching shall without delay present himself to the Ordinary of the place, and shall during his stay in the diocese be subject to the Ordinary as though he was his own Ordinary; (6) the Ordinary of the place where the school is located may assign the priest to one of the churches of his diocese, order that a vicar-forane, pastor or other priest keep special watch over the teaching priest, or that the teaching priest inform him in what house and with whom he boards, and may, if he judge it necessary, order him to observe the common obligations of clerics, especially concerning attendance at diocesan conferences, order him to stay in a religious house pointed out by the Ordinary, forbid him to teach in a coëducational school or to teach girls privately, order him to help the pastor of the place with the instruction of the children and preach at Mass, and admonish, correct and, if necessary, punish the priest; (7) the local Ordinary shall yearly at the end of the school term report to the proper Ordinary on the life and character of the teaching priest; (8) if the priest leaves the diocese for a notable length of time, he shall notify the local Ordinary, and before he goes on his summer

vacation he shall pay his respects to the local Ordinary. When he returns to his own diocese, he shall present himself to his Ordinary and obey his orders faithfully (Sacred Congregation of the Council, Feb. 22, 1927; *Acta Ap. Sedis,* XVIII, 99).

(*h*) Concerning the attendance of secular clerics at laical universities the Holy See rules that, without the permission of his own bishop, no secular cleric may attend such a university. The bishop is not permitted to send clerics to such a university before they have been ordained priests, and he should send those only who will be an honor to the Church and the priesthood, both by reason of their mental faculties and their holiness of life. If they are junior priests, they are not exempt from the yearly examinations prescribed by Canons 130 and 590, but should be examined more rigorously lest, while pursuing secular sciences, they should neglect ecclesiastical studies. After they have graduated from those universities, they must remember that they are obliged to obey their Ordinary and to serve the diocese just as other priests, and they may not without the permission of their bishop accept a professor's chair in the secular universities or any other office. If they disobey, they shall be punished, even with suspension. What is said concerning the secular clerics, applies also to the religious, including regulars; and what is here stated concerning the local Ordinary, applies to the major superiors of the religious organizations (Sacred Consistorial Congregation, April 30, 1918; *Acta Ap. Sedis,* X, 37).

(*i*) The local Ordinary has the right and duty to forbid ecclesiastics by precept to engage in political activities when their actions are not in harmony with the instructions of the Holy See, and the Ordinary has the right to punish them according to the rules of Canon Law if they violate his precept and having been admonished still refuse to obey (Sacred Congregation of the Council, March 15, 1927; *Acta Ap. Sedis,* XIX, 138).

(*j*) Concerning the emigration of priests from Europe or countries bordering on the Mediterranean Sea to America or the Philippine Islands, the Holy See ordains:

Priests of the Latin Rite who wish to go to these countries for a long or an indefinite period of time, must obtain the permission of their own Ordinary; the vicar-general or the vicar-capitular cannot grant this permission. The Ordinary may give this permission only to priests who are his own subjects by a canonical title, and they must have served in his diocese for several years. They must be men of high mental and moral standing, and they must have a good motive for desiring to emigrate (e.g., to attend to the spiritual needs of their countrymen, or to go to places where priests are needed, or to regain

their health, etc.). The bishop who grants leave to his priest to go to America or the Philippine Islands must, before issuing permission, enter into direct correspondence with the Ordinary of the place to which the priest wants to go, give him the proper information on the life and character of the priest, and ask him whether he is willing to employ him in the ecclesiastical ministry (not merely allow him to say Mass), if the priest is able to work. Unless he gets an affirmative answer to his question, he shall not permit the priest to leave. The bishop who is requested to admit the priest to the ecclesiastical ministry in his diocese, shall not accept him unless he has work for him.

The letters by which the bishop grants the priest permission to go to America or the Philippine Islands shall explicitly state whether the permission to leave is temporary, or permanent, or at the will of the bishop, shall mention the fact that the other bishop has agreed to accept him, and shall describe the priest sufficiently so that no mistake concerning his identity is possible; otherwise the letters are of no value.

The Ordinaries of Italy may not issue letters granting permission to go to America or the Philippine Islands, but, after they have made the arrangements with the other bishop, shall submit the matter to the Sacred Consistorial Congregation, which shall issue the letters granting permission and forward them to both bishops. The same applies to the bishops of Spain and Portugal, with this difference that the Legates of the Apostolic See in those countries shall issue the letters of permission.

Priests who have obtained legitimate permission to go to America or the Philippine Islands should be permitted to exercise the sacred ministry also in places through which they pass, if they are detained there for some time through illness or any other just cause, unless some special and extraordinary reason exists why the priest can not be permitted to exercise the sacred ministry. Priests who have been legitimately permitted to emigrate may also, with the consent of both bishops and the observance of the laws of the Code on incardination, be incardinated in a diocese in America or the Philippine Islands. With the consent of the bishop who first received them and the bishop to whose diocese they wish to go, such priests may later transfer to another diocese. Their own bishop in Europe must be notified of the transfer as soon as possible; in the case of Italian, Spanish or Portuguese priests, the Holy See or the respective Legate of the Holy See who gave the permission to emigrate must be notified. The new bishop who received the priest into his diocese has the obligation to notify the proper Ordinary of the priest, or the Holy See, or the Papal Legate. The Ordinaries are instructed by the Holy See not to permit the immigrant priests to live in private houses, or in boarding houses

or hotels, but in houses under ecclesiastical supervision, or in the parish rectory, or in some religious house. If the priests do not obey, the bishop shall give them peremptory warning, and, if they fail to obey the warning, he shall forbid them to say Mass.

While they are members of the community, religious may be sent by their superiors in Europe to other houses of the same organization in America or the Philippine Islands, but the Holy See warns the superiors to take care to send only men who are well educated and of blameless character.

Religious who have obtained temporary permission to live outside their own organization (*exclaustrati*) and secularized religious are subject to the same laws as secular clerics in reference to emigration to America and the Philippine Islands.

If such clerics desire to go to these countries for a short time, not exceeding six months, they do not need to find a bishop who is willing to employ them in the ecclesiastical ministry. It suffices that they have a good reason to go, and obtain permission from their own Ordinary, who shall indicate in his letters the reason for the journey and the term of the leave of absence granted to the priest. In the case of Italian, Spanish or Portuguese priests, the *beneplacitum* of the Holy See or of the Papal Legate must be obtained. The Ordinary who allows his cleric to travel to America or the Philippine Islands must see that the cleric has sufficient money, not only to reach his destination, but also for the return trip; he shall insist that the money for the return trip be deposited with some bank, or safely kept in some other manner, so that the lack of money may not prevent his return. Religious who are temporarily separated from their organization (*exclaustrati*) and secularized religious are subject to this law like secular clerics.

If, at the expiration of the leave of absence, the cleric cannot return at once for reason of illness or any other necessity or just cause, the Ordinary of the place where the priest stays may prolong the leave of absence, but must at once inform the priest's proper Ordinary and the Holy See, or the Papal Legate, who gave the *beneplacitum* for the leave of absence.

These laws apply also to priests who assist emigrants either of their own choice or at the request of an emigration society. Priests who do not obey these laws, and in defiance of them emigrate, are automatically suspended *a divinis*, and, if they nevertheless dare to say Mass, they incur irregularity, from which penalties they can be absolved only by the Sacred Consistorial Congregation (Sacred Consistorial Congregation, December 30, 1918; *Acta Ap. Sedis,* XI, 39).

(*k*) In answer to the question whether the Ordinaries may permit

their clergy to join the *Rotary Club*, the Holy See answered that it is not expedient (S. Cons. Cong., Feb. 4, 1929; *Acta Ap. Sedis*, XXI, 42).

(*l*) Priests having the care of souls must according to Canon 131, § 3, attend the diocesan priests' conferences. Assistant priests and chaplains of ecclesiastical institutions subject to the pastor must attend the conferences if they take the place of the pastor and assist him in the entire parochial ministry (Committee, February 12, 1935; *Acta Ap. Sedis*, XXVII, 92).

(10) Appointment to and Loss of Ecclesiastical Office.

(*a*) Concerning the Constitution of Pope Pius X "Vacante Sede Apostolica," on the election of the Supreme Pontiff, the Holy Father, Pope Pius XI, by *Motu Proprio* decrees the following modifications:

(i) In order to give Cardinals who live at a great distance from Rome more time to get there for the election of the new Roman Pontiff, the ten days' interval between the death of the Pope and the commencement of the election proceedings is extended to fifteen days. Besides, the Supreme Pontiff grants the Sacred College of Cardinals leave to delay entrance into the Conclave for two or three days more, but, when eighteen days after the death of the Pope have elapsed, the Cardinals who are present in Rome must at once enter into the Conclave and proceed with the election of the Pope.

(ii) Though, according to Title II, Chapter II, 38, of the Constitution "Vacante Sede Apostolica," each Cardinal may have two attendants in the Conclave, either clerics or laymen, or one cleric and one layman, they may, if they prefer, take only one man into the Conclave, and he may be a layman.

(iii) According to Title II, Chapter V, 54, only one Mass is to be said on the first morning of the Conclave, and all the Cardinals are to attend that Mass and receive Holy Communion. Now, Pope Pius XI grants leave to each Cardinal to say Holy Mass, but, if any of them do not wish to say Mass, they are to receive Holy Communion at the Mass of the Conclave (*Motu Proprio* of Pope Pius XI, March 1, 1922; *Acta Ap. Sedis*, XIV, 145).

(*b*) In case postulation concurs with election (cfr. Canon 180, § 1) and the votes in the third ballot are divided between a person who can be postulated only and a person who can be elected, the eligible person is elected on the relative plurality.

If, besides the one postulated, several persons who can be elected have received votes, is the eligible person who (in the third ballot) has received a relative plurality of votes elected? *Answer:* Yes, among those who can be elected that one is validly elected who has received a relative plurality of votes, not counting the votes cast for

the one postulated (Committee, July 1, 1922; *Acta Ap. Sedis,* XIV, 406).

(*c*) May the Ordinary, in accordance with Canon 189, validly accept a resignation after the lapse of an entire month from the tendering of the resignation without a renewal of the same? *Answer:* Yes, he may, provided the person resigning has not revoked his resignation and notified the Ordinary of the fact before he accepts the resignation.

May the resigning person, in accordance with Canon 191, § 1, revoke the resignation before it has been accepted? *Answer:* Yes, he may (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 526).

(11) Ordinary and Delegated Jurisdiction.

May the bishop habitually communicate to the priests of his territory the faculty of blessing with indulgences rosaries and other religious articles, spoken of in Canon 349, n. 1? *Answer:* No, he cannot (Sacred Penitentiary, July 18, 1919; *Acta Ap. Sedis,* XI, 332). Canon 210 lays down the general principle that the power of orders, both delegated and ordinary, cannot be delegated to others, unless the law or indult expressly grants the power of delegation.

(12) Various Declarations Concerning Parishes.

(*a*) With reference to parishes which were erected in dioceses while they were under the jurisdiction of the Sacred Congregation of the Propagation of the Faith, and which were later on placed under the common law of the Church, various doubts arose as to the nature of these parishes and the rights and duties of the pastors. The Sacred Consistorial Congregation declared:

(i) From Canon 216 it is certain that the parts of the dioceses over which a rector has been appointed for the care of souls in his district are in future to be considered as parishes, and are to be called such, reserving the name of quasi-parishes or missions for the districts into which vicariates and prefectures Apostolic are divided.

(ii) For the erection of parishes a decree of the Ordinary is indeed required, determining the boundary lines of the parish, its revenue for the conducting of the divine worship and the maintenance of the priest, but it is not necessary that the rector be irremovable; on the contrary, if there are just reasons, the removability may be declared in the document of erection of the parish, in accordance with Canons 1411, n. 4, 454, and 1438.

(iii) If the small number of the faithful, or a fluctuating Catholic

population, or a complete lack of proper funds makes it inadvisable to erect some churches as parishes, they should be made subsidiary churches or chapels depending on and joined to the territory of some parish, until such time as they can be made independent parishes.

(iv) With reference to the endowment of new parishes one must keep in mind what is stated in Canons 1409, 1410 and 1415.

(v) When a parish has been erected as described above, the rector or pastor or administrator of the parish is obliged to apply Mass for the people of the parish on Sundays and holydays; the rectors of subsidiary churches or chaplaincies are exempted from that obligation. If the burden is too great, recourse is to be made to the Holy See (Sacred Consistorial Congregation, August 1, 1919; *Acta Ap. Sedis,* XI, 346).

(*b*) As some doubts remained as to the canonical status of parishes in the United States of America which were erected before the promulgation of the Code, the Committee for the Authentic Interpretation of the Code issued the following declarations:

(i) No special or formal decree of erection of a parish by the bishop is required.

(ii) It suffices for the erection of a parish if the Ordinary define the territorial limits and assign a rector to the people and the church.

(iii) With reference to the parishes established before the promulgation of the Code, those parishes became *ipso facto* canonical parishes, and no decree of erection is necessary, but only the fixing of the territorial limits and the appointment of a pastor to take charge of such territory (September 26, 1921; communicated to the Bishops of the United States by Letters of the Apostolic Delegation at Washington, November 10, 1922).

(*c*) With reference to language parishes, the question arose whether in countries where several official languages are in vogue, but which politically form but one state, the bishop needs an Apostolic Indult, in virtue of Canon 216, § 4, to erect a parish which is exclusively destined for the people of a certain language, though that language be one of the official languages of the state, and though the parish has its own territorial boundaries? *Answer:* Yes, he needs the permission of the Holy See to erect such parishes (Committee, May 20, 1923; *Acta Ap. Sedis,* XVI, 113).

(13) Competence of the Sacred Congregations and Tribunals.

(*a*) The Committee for the Authentic Interpretation of the Code issued the following answers:

(i) Does the faculty to concede to the members of religious organ-

izations, men or women, a dispensation from the Eucharistic fast for the reception of Holy Communion pertain to the Sacred Congregation of the Sacraments or to the Sacred Congregation of Religious? *Answer:* To the Sacred Congregation of Religious.

(ii) Are matters regarding the obligations attached to major orders or the validity of sacred ordination of religious to be decided by the Sacred Congregation of the Sacraments or by the Sacred Congregation of Religious? *Answer:* By the Sacred Congregation of the Sacraments, in accordance with Canon 1993.

(iii) Is the Sacred Consistorial Congregation or the Sacred Congregation of the Council competent in the following affairs: (α) with reference to priests, either students or professors, in laical schools; (β) associations of the clergy and their federation; (γ) erection and suppression of one or another dignity in Chapters already constituted; (δ) matters pertaining to the revenue and goods of the *mensa episcopalis? Answer:* (α) the Sacred Congregation of the Council; (β) the Sacred Congregation of the Council, but this Congregation shall not fail to ask information of the Sacred Consistorial Congregation with reference to associations and confederations of the clergy of entire nations; (γ) and (δ) the Sacred Consistorial Congregation.

(iv) Does the concession of the faculty to alienate goods which belong to diocesan seminaries pertain to the Sacred Congregation of Seminaries and Universities or to the Sacred Congregation of the Council? *Answer:* To the Sacred Congregation of Seminaries and Universities (November 13 and 27, 1922; *Acta Ap. Sedis,* XV, 39).

(*b*) Do all questions which concern some right or advantage or interest of some religious family or of religious members pertain exclusively to the Sacred Congregation of Religious? *Answer:* Yes, in the sense, however, of Canon 251.

Does the concession (with due observance of the customary rules) of sanations and condonations for the past and reductions for the future in connection with the obligations attached to chaplaincies and other legacies, which, though not entrusted to the religious Order or family as such, are erected in or transferred to their churches, pertain to the Sacred Congregation of the Council or rather to the Sacred Congregation of Religious? *Answer:* Exclusively to the Sacred Congregation of Religious for the time that the administration and fulfillment of the obligations of legacies are entrusted to the religious.

What Sacred Congregation is competent to grant to the religious a dispensation for the reception of Sacred Orders, either in the case of lack of required age, or irregularity, or other conditions for the conferring of Orders, or the required studies before the various Orders? *Answer:* The Sacred Congregation of Religious.

What Sacred Congregation is competent to grant a dispensation to religious who, for reason of illness or for other reasons, are physically or morally prevented from saying Mass (e.g., if they cannot stand on their feet long enough to say Holy Mass)? *Answer:* The Sacred Congregation of Religious (Special Committee of Cardinals, March 24, 1919; *Acta Ap. Sedis,* XI, 251).

(*c*) The Committee for the Authentic Interpretation of the Code declares that it shall answer only questions proposed by Ordinaries, major religious superiors of orders and congregations, etc., and not those proposed by private individuals unless they propose them through their own Ordinary (December 9, 1917; *Acta Ap. Sedis,* X, 77).

(*d*) May doubts of minor importance or which do not offer much difficulty be answered by the President of the Committee for the Authentic Interpretation of the Code? *Answer:* Yes (Committee, December 9, 1917; *Acta Ap. Sedis,* XI, 480).

(*e*) Matters of the internal forum concerning Oriental Catholics, even non-sacramental, belong to the jurisdiction of the Sacred Penitentiary (Sacred Congregation for the Oriental Church, July 26, 1930; *Acta Ap. Sedis,* XXII, 394).

(14) Vicars and Prefects Apostolic and Abbots Nullius.

(*a*) Have vicars and prefects Apostolic the right in their own territory to be mentioned in the Canon of the Mass (cfr. Canons 294 and 308)? *Answer:* No, they do not have that right according to the Rubrics and Decrees, because, in accordance with the law still in force, in the Canon of the Mass—after the words "Antistite nostro"—is to be inserted only the name of the patriarch, archbishop, or bishop who is the local Ordinary of the diocese in which the Mass is said (Sacred Congregation of Rites, March 8, 1919; *Acta Ap. Sedis,* XI, 145).

(*b*) Canon 300 prescribes that the bishops, vicars and prefects Apostolic and the superiors of missions who are under the jurisdiction of the Sacred Congregation of the Propagation of the Faith make a complete report on the spiritual and material condition of their mission district every five years, as is prescribed by Canon 340 for all local Ordinaries. The Sacred Congregation of the Propaganda had published a list of questions to be answered by the Ordinaries in the mission districts, June 1, 1877. Since the Code has made some changes and rearrangements, the Sacred Congregation publishes a new list of questions to be answered in the report (Sacred Congregation of the Propagation of the Faith, April 16, 1922; *Acta Ap. Sedis,* XIV, 287 sqq.).

(*c*) Pro-vicars Apostolic may during a vacancy issue dimissorial letters without waiting for full year of vacancy (Committee, July 20, 1929; *Acta Ap. Sedis,* XXI, 573).

(*d*) Vicars and prefects Apostolic are allowed to appoint a vicar delegate after the manner of a vicar general (Sacred Congregation of the Propaganda, December 8, 1919; *Acta Ap. Sedis,* XII, 120).

(*e*) An Instruction has been issued to vicars and prefects Apostolic and superiors of religious missionaries on the respective rights and duties of the ecclesiastical superior and the superior of the religious (Sacred Congregation of the Propaganda, December 8, 1929; *Acta Ap. Sedis,* XXII, 111).

(*f*) Abbots *nullius* who are not consecrated bishops cannot even with permission of the bishop validly consecrate churches outside their own territory (Committee, January 29, 1931; *Acta Ap. Sedis,* XXIII, 110).

(15) Duties and Rights of Bishops.

(*a*) What are the suppressed feasts spoken of in Canons 339 and 466, on which the bishops and pastors are obliged to say Holy Mass for the people? *Answer:* In this matter, no change has been made in the former discipline (Committee, February 17, 1918; *Acta Ap. Sedis,* X, 170).

(*b*) The official list of the suppressed feasts on which, in virtue of Canons 339 and 466, the bishops and pastors must say Mass for the people, was published by the Sacred Congregation of the Council, December 28, 1919 (*Acta Ap. Sedis,* XII, 42). Cfr. Volume I, n. 251.

(*c*) With reference to the quinquennial report on the state of the diocese to be made to the Holy See by the bishops in accordance with the precept of Canon 340, the Sacred Consistorial Congregation published a lengthy formula or questionnaire which the bishops must employ in making said report (November 4, 1918; *Acta Ap. Sedis,* X, 487).

(*d*) With reference to the privileges, insignia, and functions of bishops, either when performing pontifical functions in their own diocese or in that of another bishop, or when several bishops take part in the sacred ceremonies, there are a number of liturgical difficulties which are now officially decided by the Sacred Congregation of Rites, November 26, 1919 (*Acta Ap. Sedis,* XII, 177; cfr. *Homiletic and Pastoral Review,* August, 1920, 1070–1074).

(*e*) If the bishop cannot habitually delegate the faculties of the Code to priests of his diocese, as was declared by the Sacred Penitentiary, July 15, 1919, can he delegate them at least for individual acts (*per modum actus*)? Furthermore, has the vicar-general the faculties given

to bishops by Canon 349, § 1, n. 1? The Sacred Penitentiary answers "no" to both points (November 10, 1926; *Acta Ap. Sedis,* XVIII, 500).

(*f*) The phrase "ritibus ab Ecclesia præscriptis" in Canon 349, § 1, n. 1, permits the bishop to bless sacred objects with the mere sign of the cross when the liturgical books prescribe no special form of blessing (Committee, March 12, 1929; *Acta Ap. Sedis,* XXI, 170).

(16) Right of Precedence of the Vicar-General.

Has the vicar-general the right of precedence over the prior and pastor of the cathedral church, and has he the right of precedence over all dignitaries and canons of the cathedral church, when he assists in the choir vested with the robes of the canons? *Answer:* In both cases he has the right of precedence (Sacred Congregation of the Council, May 17, 1919; *Acta Ap. Sedis,* XI, 349).

If the vicar-general is not a canon, has he the right to a place in choir and in acts of the Chapter, and precedence over all canons and dignitaries? *Answer:* Yes, he has, in accordance with Canon 370 (Sacred Congregation of the Council, December 15, 1923; *Acta Ap. Sedis,* XVI, 371).

(17) Concerning Chapters of Canons.

(*a*) Is the bishop obliged, in virtue of Canon 395, § 1, to set apart for daily distributions for cathedral and collegiate Chapters one-third of the revenue of said Chapters, though in these churches the choral distributions, however small they be, originated by Apostolic privilege? *Answer:* Yes (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 477).

(*b*) Concerning the choir service of canons the Holy See declared: (1) that after the promulgation of the Code the privilege to say the office *per turnum* (*ius alternativæ*) can be obtained only by explicit concession of Apostolic See, saving the regulations of the charter of a Chapter, not by custom or statute of the Chapter; (2) the canons who attend choir in the week when they were free from choir service cannot thereby supply the absences committed in their week of choir service; (3) since it has been declared (March 15, 1924) that a canon is to be considered absent for an entire day if he unlawfully absents himself from some of the Canonical Hours, the same rule is to be applied also to those canons absent from some Hour who have obtained the indult "pro diebus et horis" (Sacred Congregation of the Council, May 2, 1927; *Acta Ap. Sedis,* XIX, 415).

(*c*) Have persons who are absent from choir in virtue of an

Apostolic indult which grants them the right to the daily distributions with the exception of the portion that is destined exclusively for those actually present, a right to the *fallentiæ? Answer:* Yes, provided there is no question of *fallentiæ* which are made up of the distributions destined for those actually present (Sacred Congregation of the Council, January 15, 1921; *Acta Ap. Sedis,* XIII, 198).

(d) Can the centenary and immemorial custom of Spain be upheld of sharing in the daily revenue of a benefice, though the beneficiary is present in choir only at one or two Canonical Hours within a natural or liturgical day? *Answer:* No.

Must Canon 2381 be applied also in case of a non-residence which is not grievously sinful, or is only materially and not formally culpable and notorious? *Answer:* Yes, that Canon applies, provided that there are no other grounds for excuse, as mentioned in Canons 420–421, and no Papal Indult.

After Canon 2381 came into force, may the beneficiary or canon who was unlawfully absent from his residence retain that part of the revenue of the benefice which corresponds to the private recitation of the Divine Office? *Answer:* He may not.

May the holder of a residential benefice, who has neglected the duty of residence and who is still in possession of his benefice (though unlawfully absent), put aside and retain a certain portion of the revenue to be designated by the Ordinary, which is to be sufficiently large to provide for his maintenance? *Answer:* He cannot retain such portion.

In consideration of the needs of the churches, may the statutes of a Chapter with the approval of the Ordinary rule that the part of the income lost by those who violate the law of residence is to be applied either in whole or in part to the upkeep of the churches? *Answer:* The precepts of Canons 1475 and 2381 are to be observed.

Is the time of absence to be figured by days or by Canonical Hours, whenever days of illegitimate absence are required in order to constitute non-residence, and may proceedings be instituted against the offender in accordance with Canons 2168–2175? *Answer:* The absence is to be computed by entire days, and the time of illegitimate absence is to be reckoned immediately from the time when the three months' vacation or any other legitimate vacation expires.

Are illegitimately absent persons obliged to make restitution of the proportionate part of the income before a declaratory sentence to that effect has been issued against them? *Answer:* Yes (Sacred Congregation of the Council, July 10, 1920; *Acta Ap. Sedis,* XII, 357).

(*e*) In accordance with Canon 396, is the conferring of dignities in Chapters reserved to the Apostolic See, if no prebend or benefice,

or emoluments, or very meager ones are attached to the dignities? *Answer:* Yes, they are reserved (Committee, July 1, 1922; *Acta Ap. Sedis,* XIV, 406).

(*f*) Is the option spoken of in Canon 396 to be considered forbidden, even where it is in vogue by special Apostolic indult? *Answer:* Yes, it is forbidden (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 477).

(*g*) Is the prohibition of the option introduced by the Code to be understood to extend to dignities only, or also to all canonries? *Answer:* It extends to all canonries (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 573).

(*h*) Option, according to Canon 396, § 2, is permitted only in those Chapters in which the founders of certain benefices of the Chapter have stipulated that option should prevail. These stipulations are called the "laws of the foundation." The term foundation of a benefice is to be understood, not of the erection of a benefice, which is at times also called a foundation (cfr. Canon 1435), but of the endowment of the benefice by a benefactor [Sacred Congregation of the Council (*in Causa Nicosiensi*), June 9, 1923; *Acta Ap. Sedis,* XVI, 432].

(*i*) In accordance with the common law (cfr. Canon 397, n. 4), the dignitaries and canons, in the order of precedence, have the right and duty to convoke the Chapter and to preside over it. The coadjutor of the "præpositus" does not have the right to preside over the meetings of the Chapter, unless the statutes of the Chapter state otherwise [Sacred Congregation of the Council (*in Causa Placentina*), December 11, 1920; *Acta Ap. Sedis,* XIV, 42].

(*j*) As the term "conferre" or "collatio" in Canon 403 means free appointment to benefices, the right of presentation to canonries and other benefices of the Chapter is abolished, except where such right is based on the charter of the foundation of the benefice (Sacred Congregation of the Council, November 12, 1921, and June 10, 1922; *Acta Ap. Sedis,* XIV, 459).

The right of nomination or presentation for benefices and canonries in cathedral and collegiate churches exists by the law of Canon 403 solely where the charter of the foundation of a benefice grants that right. There is no foundation, unless a benefactor has endowed a benefice. If benefices are erected and endowed from the goods of other benefices, there is no founder properly so-called [Sacred Congregation of the Council (*in Causa Utinensi*), February 10, 1923; *Acta Ap. Sedis,* XV, 544].

In appointments to benefices and canonries in cathedral and collegiate churches, the respective Chapter in whose church the appoint-

ment is to be made must be consulted by the local Ordinary (Committee, November 10, 1925; *Acta Ap. Sedis,* XVII, 582).

(*k*) A canon who refuses to occupy during choir duty the stall or seat legitimately appointed for him by the bishop, forfeits the right to the choral distributions (Sacred Congregation of the Council, July 8, 1922; *Acta Ap. Sedis,* XV, 115).

(*l*) Have the beneficiaries and *mansionarii* a vote in Chapter, if they have that right merely by the statutes of the Chapter? *Answer:* No. After the promulgation of the Code beneficiaries who are not canons and the *mansionarii* are not members of the Chapter (cfr. Canon 393), and have no vote, if the right to vote was granted to them merely by the statutes of the Chapter (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 573).

(*m*) In accordance with Canons 413 and 417, the hebdomadarian of the Chapter has the obligation to say the Conventual Mass and to apply it for the benefactors. If, by centenary custom or legitimate prescription, the dignitaries of the Chapter say the Conventual Mass on certain feasts, the custom may be tolerated, so that the saying of the Mass and application for the benefactors devolves on the dignitaries (Sacred Congregation of the Council, March 13, 1920, and March 12, 1921; *Acta Ap. Sedis,* XIII, 438).

(*n*) In virtue of Canon 416, are the canon theologian and the canon penitentiary exempted from the office of deacon and subdeacon to the bishop celebrating solemnly? *Answer:* No, they are not exempt, and the *Cæremoniale Episcoporum* is to be observed (Sacred Congregation of the Council, February 14, 1920, and March 10, 1923; *Acta Ap. Sedis,* XII, 117, XV, 588).

(*o*) The substitution for choir duty in Chapters of Canons, spoken of in Canon 419, § 1, may be made without the permission of the Holy See or the local Ordinary (Committee, July 25, 1926; *Acta Ap. Sedis,* XVIII, 393).

(*p*) Are the canons who have the obligation attached to their benefice to teach sacred theology and Canon Law in the seminary, excused from the obligation of the choir, though their lectures take place outside the hours of choir, and are they exempt from the choir duty also on holydays on which there is no school and during the vacations? *Answer:* They are free from the choir duty on days on which they lecture, but they forfeit the daily distributions; on days on which they do not lecture, they are not excused (Committee, November 24, 1918; *Archiv für katholisches Kirchenrecht,* IC, 61).

(*q*) Are canons who, in accordance with Canon 421, n. 1, teach theology or Canon Law with the permission of the bishop in schools approved by the Church, entitled to the revenue of their benefice only

when they receive no remuneration for their teaching, or also when they receive a salary? *Answer:* They are entitled to the income of their benefice, even though they receive remuneration.

Are the terms "sacred theology and Canon Law" in Canon 421, n. 1, to be strictly applied to theology and Canon Law, or may they be applied also to other sciences, e.g., church history, sacred archeology, biblical languages, etc.? *Answer:* Those terms may be applied also to other sacred sciences (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 573).

(*r*) The canon theologian who, at the wish of the bishop, teaches theology in a seminary outside the diocese, in which the seminarians of his own diocese are educated, is excused from choir duty, and has the right to the daily distributions, though he receives a salary for teaching in the seminary, and is not obliged to provide with his own means a substitute who preaches at the cathedral church [Sacred Congregation of the Council (*in Causa Rapollensi*), July 9, 1921; *Acta Ap. Sedis,* XVI, 397].

(*s*) Are canons jubilarians exempted from the service of the altar in their turn, notwithstanding contrary custom? *Answer:* They are exempt in accordance with Canon 422 (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 477).

(18) Concerning Diocesan Consultors and Vicars-Forane.

The vicar-forane who is at the same time a canon of a Collegiate Chapter in his district does not precede the other canons in choir and other capitular acts (Committee, November 10, 1925; *Acta Ap. Sedis,* XVII, 582).

Religious and secularized religious priests may not be appointed as diocesan consultors (Committee, January 29, 1931; *Acta Ap. Sedis,* XXIII, 110).

(19) Concerning Pastors.

Concerning the appointment of pastors to irremovable parishes, the Third Plenary Council of Baltimore, n. 26, decreed (1) that a priest must have exercised the sacred ministry in the diocese for at least ten years; (2) that within those years he proved himself capable of administering a parish; (3) that he make the concursus according to the form appointed by the Constitution "Cum Illud" of Pope Benedict XIV. The Hierarchy of the United States requested the Holy See to abrogate this law of the Council of Baltimore and permit the appointment of pastors to all parishes to be made according to Canon 459, § 3.

The Holy See granted the petition, abolished the law of the Council of Baltimore referred to in the petition, and ordered that henceforth the appointment of pastors, irremovable and removable, be made according to Canon 459, § 3 (Sacred Congregation of the Council, June 24, 1931; Letter of the Apostolic Delegation to the local Ordinaries of the U. S., August 1, 1931; cfr. *The Homiletic and Pastoral Review,* November, 1931, XXXII, 189).

(*a*) Canon 459, § 3, n. 3, prescribes that the local Ordinary shall subject the cleric whom he judges qualified for the pastorship of a vacant parish to an examination before himself and the synodal examiners. The following questions arose as to the interpretation of the above precept:

(*i*) Must a priest who has already been pastor of a parish undergo the examination as often as he obtains a new parish, or does the examination made for the first parish suffice? *Answer:* He need not make a new examination, if the transfer from one parish to another is done at the suggestion and the request of the bishop; if, however, the pastor request the transfer, he is obliged to undergo a new examination, unless the Ordinary together with the synodal examiners judge him qualified for the new parish.

(ii) Must a pastor, who is removed from his parish in accordance with Canon 2154 and placed in charge of another parish, undergo the examination? *Answer:* No.

(iii) Must a pastor, who is *ex officio* transferred from one parish to another in accordance with Canons 2162–2167, undergo the examination? *Answer:* No.

(iv) What shall be done if no priests whom the Ordinary judges qualified want to undergo the examination, which perhaps happens more than once when there is question of small parishes? *Answer:* In so far as the answer to the first question does not cover the case, the Ordinary shall have recourse to the Sacred Congregation of the Council.

(v) Does the examination spoken of in Canon 996, provided it be conducted before the Ordinary himself and the synodal examiners, suffice for the appointment to the pastorship of the first parish? *Answer:* No, unless the examination covers all those matters concerning which priests who desire to become pastors are to be examined.

(vi) Does the yearly examination of junior priests (cfr. Canon 130) suffice for the appointment to pastorship, if they are to be made pastors during the time that they are liable to the yearly examination, provided those examinations are conducted before the bishop and the synodal examiners? *Answer:* No, it does not suffice, but in the ap-

pointment to the pastorship those are to be preferred who, all other things being equal, got the higher marks in the examinations, as is stated in Canon 130 [Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 574; cfr. decision of the Sacred Congregation of the Council (*in Causa Romana et aliarum*), June 21, 1919; *Acta Ap. Sedis,* XI, 318].

(vii) The concursus for pastorate spoken of in Canon 459, § 4, need not be observed when a newly erected parish is provided with a pastor for the first time (Committee, June 25, 1932; *Acta Ap. Sedis,* XXIV, 284).

(*b*) Does Canon 460 (stating that there shall be but one pastor in one district) apply only to parishes to be later established, or also to parishes erected before the promulgation of the Code? *Answer:* It applies also to parishes erected before the Code became law.

Does the precept of Canon 460 apply also to parishes in which the plurality of pastors was introduced, not by custom or privilege, but by legitimate statute? *Answer:* It applies also to those parishes.

Do the rights already acquired by the several pastors in one and the same district (cumulative pastors) remain to them both in spiritual and temporal affairs, or are the temporal rights lost? *Answer:* The above answers decide the case, i.e., only one priest with parochial jurisdiction can remain in one and the same district. For the application of Canon 460 to these special circumstances, recourse is to be had to the Sacred Congregation of the Council.

Is the care of souls in a district which had several pastors to be committed to the one pastor who has the preëminence of honor? *Answer:* The same as in the preceding paragraph (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 527).

(*c*) Are the words of Canon 462, n. 7—"to conduct public processions outside the church"—to be understood of those processions only which start from the parochial church, or also of processions which start from other churches located within the territory of a parish, even when these churches are not subsidiary churches of the parish, and have their own rector? *Answer:* Those words apply to all these churches, without prejudice, however, to the rights granted to all non-parochial churches by Canons 482 and 1291 (Committee, November 12, 1922; *Acta Ap. Sedis,* XIV, 661).

The right of the pastor to conduct public processions outside the church within the territory of his parish extends also to processions held by religious, even exempt ones, outside their churches and cloisters, unless they have the permission of the local Ordinary. The Corpus Christi procession, however, is regulated by Canon 1291, § 2 (Committee, November 10, 1925; *Acta Ap. Sedis,* XVII, 582).

(*d*) The Archbishop of Breslau explains that in his archdiocese

there are three kinds of pastors: (i) in the scattered districts where the Catholic people are but few in number, as compared to the non-Catholics, there are many parishes erected which are similar to those in missionary countries; they are not benefices properly so called, but stations or chapels erected for the care of souls within certain districts defined by territorial boundaries; (ii) in other parts of the country where there are parishes in the proper sense of the term, other churches have been erected for the benefit of parishioners who are too far away from the parish church, and these churches have not been completely separated from the parish; (iii) other churches exist which are of the nature of those mentioned in (ii), but the rectors of these churches have the administration of the temporal goods entirely independently of the parish church. Are the pastors of the various kinds of parishes obliged to apply Mass for the people? *Answer:* The pastors mentioned under n. 1 are: those described under nn. 2 and 3 are not [Sacred Congregation of the Council (*in Causa Wratislaviensi*), July 13, 1918; *Acta Ap. Sedis,* XI, 46].

(*e*) Must a priest who is temporarily in charge of several parishes apply more than one Mass on Sundays and holydays for the people of the several parishes entrusted to him? *Answer:* He may apply one Mass in accordance with Canon 473 (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 528).

(*f*) The pastor of the cathedral church precedes the pastor of a non-cathedral church, though the latter holds at the same time a dignity in the cathedral church [Sacred Congregation of the Council (*in Causa Forloviensi*), February 10 and June 9, 1923; *Acta Ap. Sedis,* XVI, 400].

(*g*) A pastor in charge of two parish churches must say the Office with octave of the titular feasts of both churches, not merely of that at which he resides (Sacred Congregation of Rites, April 27, 1929; *Acta Ap. Sedis,* XXI, 321).

(20) Concerning Parochial Vicars.

(*a*) The *vicarius substitutus* (i.e., a priest who takes charge of a parish in the absence of a pastor, cfr. Canon 465) has, in virtue of Canon 474, full parochial powers in all things concerning the care of souls. In reference to the assistance at marriages by a substitute of a pastor, various points have been decided (cfr. Volume I, n. 343) by the Committee (July 14, 1922; *Acta Ap. Sedis,* XIV, 528; May 20, 1923; *Acta Ap. Sedis,* XVI, 113).

(*b*) The *vicarii cooperatores* (i.e., assistant priests to a pastor) are appointed by the bishop, but he must, in accordance with Canon

476, give a hearing to the pastor before making the appointment of an assistant priest, for the Sacred Congregation of the Council, November 13, 1920, declared that, notwithstanding any custom to the contrary, the Ordinary must consult the pastor (*Acta Ap. Sedis,* XIII, 43).

(*c*) Assistant priests' rights and duties are not determined by the common law, but must be learned from the statutes of the respective diocese, from the letters of appointment of the bishop, and from the commission given them by the pastor (Committee, May 20, 1923; *Acta Ap. Sedis,* XVI, 113).

(21) Concerning the Constitutions, Superiors and Chapters of Religious Organizations.

(*a*) The Canons of the Code on religious laical organizations have been translated into various languages, the translations being authorized but not official. Now, in some translations the text of certain Canons does not agree with the precepts of those Canons in the Code. It is asked whether some changes have been made in those matters, or whether one must adhere to the text of the Code and consider the divergence of the translation as a mistake? *Answer:* The Code must be adhered to and the translation is to be corrected (Sacred Congregation of Religious, April 2, 1919; *Acta Ap. Sedis,* XI, 179).

(*b*) The Rules or *Normæ,* according to which the Sacred Congregation of Religious usually proceeds in the approval of new religious congregations, were first published in 1901. The Sacred Congregation has revised these rules in accordance with the Code of Canon Law. The new *Normæ* outline the manner of procedure by the bishop who wishes to establish a new religious congregation. The second part of the old *Normæ,* on the government of new congregations, the novitiate, profession, etc., is not considered necessary any longer by the Sacred Congregation. It says that the writers of constitutions for new religious organizations should be guided by the Canons of the Code and by approved authors who wrote on the foundation of new religious organizations after the publication of the *Normæ* of 1901 (Sacred Congregation of Religious, March 6, 1921; *Acta Ap. Sedis,* XIII, 312).

(*c*) Do the convents of nuns in France and Belgium, whose vows were originally solemn vows but were reduced to simple vows by order of the Apostolic See, continue to be under the jurisdiction of the local Ordinaries as before the promulgation of the Code? *Answer:* The Holy See is to be requested to make those convents dependent on the local Ordinaries with this limitation that the bishops have no authority

to change the rules of the ancient Orders or the constitutions of nuns approved by the Holy See. The Supreme Pontiff approved the recommendation of the Sacred Congregation (Sacred Congregation of Religious, May 22, 1919; *Acta Ap. Sedis,* XI, 240).

(*d*) It happens at times that convents of nuns, whose vows were originally solemn vows but have been reduced to simple vows by the Apostolic See in some countries, establish new convents of the same Order in other countries by sending there some of the nuns. From this condition the following questions arise:

(i) Are the vows of the nuns in convents established in other countries to be considered solemn or simple vows? *Answer:* They are solemn vows, provided the *beneplacitum* of the Apostolic See was obtained for the new convents in other countries.

(ii) Can the nuns spoken of in Canon 488, n. 7, establish new convents in other places without the *beneplacitum* of the Holy See? *Answer:* No, and the Holy See is to be requested to grant a *sanatio* for the convents already founded without the *beneplacitum* of the Holy See.

(iii) Does a convent of nuns with solemn vows and Papal enclosure when transferred to another place continue to have Papal enclosure and solemn vows? *Answer:* Recourse is to be had in each case to the Apostolic See.

(iv) What is the canonical status of a convent of nuns spoken of in Canon 488, n. 7, when transferred to a country where the reduction of solemn to simple vows does not apply? *Answer:* Each case is to be referred to the Apostolic See. The Supreme Pontiff approved the Decree of the Sacred Congregation and granted the request for the *sanatio* (Sacred Congregation of Religious, July 27, 1922; *Acta Ap. Sedis,* XIV, 554).

(*e*) Concerning the convents of nuns in France and Belgium the Holy See declared: (i) the nuns of convents which profess the rules of religious Orders and whose vows were originally solemn vows, though at present they have only simple vows, are truly nuns of Papal Law in the sense of Canon 488, n. 7, like other nuns in the universal Church; (ii) their convents, however, are not subject to the superiors of regular Orders, except by special privilege, and therefore they do not, in accordance with Canon 615, enjoy the privilege of exemption, but are subject to the jurisdiction of the local Ordinaries in those matters in which the Code gives the local Ordinaries jurisdiction over nuns; (iii) there is no objection at present, if a convent of nuns requests it, to their being permitted to make solemn vows observing Papal enclosure, provided they obtain the permission of the Apostolic

See (Sacred Congregation of Religious, June 23, 1923; *Acta Ap. Sedis,* XV, 357).

(*f*) On the government of religious there are the following declarations:

(1) Have the founders (men or women) of religious congregations or pious societies, who live after the manner of religious, the right to retain for life the office of supreme superiors in the organization, though the constitutions limit the office of the superior to a certain term of years and forbid the reëlection of the same persons beyond a certain limit? *Answer:* They have no right to perpetual superiorship, unless they have obtained an Apostolic Indult (Sacred Congregation of Religious, February 25, 1922; *Acta Ap. Sedis,* XIV, 163).

(2) Concerning the repeated reëlection of the same person to the office of superior general in religious organizations of women, the Sacred Congregation of Religious declares that, where the constitutions fix the term of office (extending frequently to six years), and allow the reëlection for another term, the Chapter needs permission from the Sacred Congregation of Religious to reëlect superiors for a third, fourth, etc., term. The very fact that the constitutions decree that the office of the superioress general should be temporary, prove that reëlection of the same person for more than two terms (especially when each term lasts six years) is against one of the essential principles of the constitution of these organizations. The Holy See wishes to impress the voters with the fact that it does not easily permit the holding of office by the superioress general beyond the terms fixed by the constitutions (Circular Letter of the Sacred Congregation of Religious, March 9, 1920; *Acta Ap. Sedis,* XII, 365).

(3) The Instruction of the Sacred Congregation of Religious on the Papal enclosure of nuns states that, since the promulgation of the Decree of this Congregation, June 23, 1923, on the status of the nuns in France and Belgium, many convents of nuns have availed themselves of the permission to apply for the making of solemn vows, and have asked for definite information on the law of Papal enclosure to be observed by those convents which obtained permission to make solemn vows. The Sacred Congregation, therefore, sums up the former law on the enclosure of nuns, and modifies these laws to some extent to harmonize with the Code and to take account of modern conditions (Sacred Congregation of Religious, February 6, 1924; *Acta Ap. Sedis,* XVI, 96).

(4) The term "local superior" in the Code does not apply to the superiors of those religious houses which are merely branches of the motherhouse (*domus filiales*), because such superiors are only delegates

of the superior of the motherhouse and are removable at the will of that superior. The Sacred Congregation of Religious ordains that, in the revision of the constitutions for the purpose of conforming them to the Code of Canon Law, each Order and Congregation should specify which houses are to be considered merely as branches of the motherhouse (Sacred Congregation of Religious, February 1, 1924; *Acta Ap. Sedis*, XVI, 95).

(5) Concerning the precept of Canon 505, the Holy See has declared that it applies also to directors of schools, hospitals, and other charitable institutes, if they are at the same time religious superiors having charge over other religious in reference to religious discipline; if they do not have such charge, the law does not apply to them (Committee, June 2–3, 1918; *Acta Ap. Sedis*, X, 344).

(6) The precept of Canon 505 comprises also the Societies spoken of in Canons 673–681, and applies to those houses of the Societies which are not properly speaking religious houses, but are merely externally connected with the Society in so far as a few of the members are employed in those houses (e.g., seminaries, schools, hospitals), in accordance with the declaration of July 3, 1918 (Committee, July 25, 1926; *Acta Ap. Sedis*, XVIII, 393).

(7) If a convent of sisters in solemn vows is under the jurisdiction of the regular superior, he has the right to preside at the elections held by the nuns (cfr. Canon 506, § 2). The local Ordinary, however, is to be informed of the elections to be held, and, if he desires, he may attend the elections together with the regular superior, and the Holy See declares that the local Ordinary or his delegate has then the right to preside at these elections (Committee, November 24, 1920; *Acta Ap. Sedis*, XII, 574).

It has been decided that the presiding at the election of the abbess, spoken of in Canon 506, § 2, is not presidency of honor only but also of jurisdiction (Committee, July 30, 1934; *Acta Ap. Sedis*, XXVI, 494).

(8) As to the Chapter of diocesan religious communities, the question arose whether the bishop of the motherhouse or the superioress general has the right to decide where the Chapter is to be held, if the diocesan congregation has houses in other dioceses. The Sacred Congregation of Religious declares that the Mother General has the right to determine where the Chapter is to be held, and that the right of presiding over the election of the Mother General and of confirming or rescinding the election does not pertain to the local Ordinary of the motherhouse, but to the local Ordinary of the place where the Chapter is held, in accordance with Canon 506, § 4 (June 25, 1921; *Acta Ap. Sedis*, XIII, 481).

(9) In reference to the visitation of the convents of Sisters in solemn vows which are under the jurisdiction of regulars, the question arose whether, in accordance with Canons 512, § 2, n. 1, and 513, the local Ordinary (besides the regular superior) has the right to visit these convents every five years in reference to the observance of the law of enclosure? *Answer:* Yes, he has the right according to Canon 513 (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 575).

(*g*) Concerning the confessors of religious, the following declarations have been issued:

(1) The Sacred Congregation of Religious had answered the Bishop of Linz, July 3, 1916, that there was no obligation to appoint an ordinary confessor for a convent, if there were not at least six Sisters living at the convent. Canon 520 prescribes that a confessor should be appointed for every house of Sisters. The Archbishop of Prague, therefore, asked whether he might act on the Decree of the Sacred Congregation to the Bishop of Linz? *Answer:* The precept of Canon 520 is to be observed (Sacred Congregation of Religious, January 10, 1920; *Archiv für katholisches Kirchenrecht,* C, 47).

The Bishop of Osnabrück asked whether there is a strict obligation to appoint for each convent of Sisters an ordinary and an extraordinary confessor in the case of the so-called *domus non-formatæ* (i.e., houses in which there are less than six professed Sisters), or whether that obligation exists only when there are more than six professed Sisters in a convent? *Answer:* Canons 520–521 give the answer—i.e., those confessors must be appointed for each convent of Sisters. In reference to the other question proposed by the same bishop concerning the place of confession for Sisters, the declaration of the Committee, November 24, 1920, is decisive (Committee, January 16, 1921; *Archiv für katholisches Kirchenrecht,* CI, 61).

(2) Concerning the place of confession for Sisters the Holy See was requested to decide whether Canon 522—stating that "confession made in any church or public and semi-public oratory is valid and licit"—is to be understood in such a manner that the confession made outside those places is not only illicit but also invalid. The Committee answered: Canon 522 is to be understood in such a way that the confession made by a Sister for the peace of her conscience to any confessor approved by the local Ordinary for confessions of women is licit and valid, provided it be made in a church or a public or semi-public oratory, or in a place legitimately appointed for the hearing of confessions of women (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 575).

The Holy See has answered to the following questions: (1) Is the confession of religious women outside of the places spoken of in

Canon 522 and in the answer of November 24, 1920, merely illicit or also invalid?—Not only illicit but invalid. Is the word "adeat" in Canon 522 to be so understood that the confessor cannot be called by the religious herself to a place legitimately appointed for the hearing of confessions of women or religious sisters?—No, it need not be understood in that sense (Committee, December 28, 1927; *Acta Ap. Sedis*, XX, 61).

(3) Canon 522 permits, indeed, that a Sister make use of any occasion that presents itself to go to confession for the peace of her conscience to any confessor approved for the confessions of women by the local Ordinary, even without the knowledge of her superioress. That Canon, however, does not in any way impose upon the superioress or upon the Ordinary the duty to create such occasion for the Sisters—much less shall anything be changed for that purpose in the discipline of the enclosure or in the constitutions. Wherefore, the Sacred Congregation of Religious answers to the question of the bishop that the Sisters should await an occasion, but they may not without permission leave the enclosure to go to confession; they must bear the situation patiently, if no occasion offers them an opportunity to make use of the concession of Canon 522 (December 1, 1921; *Archiv für katholisches Kirchenrecht*, CII, 84).

The phrase "a place legitimately appointed for the confessions of women" need not be understood as a place permanently appointed, but may be understood as a place appointed or chosen *per modum actus*, according to Canon 910, § 1 (Committee, February 12, 1935; *Acta Ap. Sedis*, XXVII, 92).

(*h*) Concerning the administration of Holy Viaticum and Extreme Unction to religious, it has been declared that Canon 514, § 1, is to be understood in such a sense that the superiors of clerical religious communities have the right to give those Sacraments to their subjects even when they are outside the religious house (e.g., in a hospital), but that right is restricted to the professed and the novices. Moreover, in places where the Blessed Sacrament is carried publicly to the sick, the superior would not of his own authority be entitled to carry the Sacrament publicly to his subjects; Canon 848 reserves that right to the pastor within his parish (Committee, June 16, 1931; *Acta Ap. Sedis*, XXIII, 353).

(22) Concerning the Temporal Goods of Religious and Their Administration.

In virtue of Canon 535, n. 1, must an account of the administration be given by Sisters in solemn vows, who are under the jurisdiction of

the regular superior, not only to the regular superior but also to the local Ordinary? *Answer:* To both the superior and the Ordinary (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 575).

(23) Concerning the Report on the Status of Religious Orders and Congregations of Papal Law to the Holy See.

The Code prescribes that the supreme superior of every monastic congregation and religious organization of Papal law shall make a report to the Holy See on the status of his respective organization every five years, or more frequently if the constitutions prescribe it (cfr. Canon 510). Now, the Sacred Congregation regulates the order or sequence in which the various religious Orders and Congregations are to make the report, beginning with January 1, 1923 (March 8, 1922; *Acta Ap. Sedis,* XIV, 161). Cfr. Volume I, n. 387.

For the religious organizations of simple vows approved by the Holy See the Sacred Congregation of Religious has issued a formula or questionnaire upon which the superior general of those organizations is to base his reports (March 25, 1922; *Acta Ap. Sedis,* XIV, 278).

(24) Concerning the Novitiate.

(*a*) The constitutions of some religious organizations prescribe two years' novitiate, and allow the superiors to employ the novices in various duties of the organization during the second year. The Sacred Congregation of Religious demands: (i) that the second year be truly a year of novitiate, given chiefly to the formation of the spiritual life of the novices; (ii) the novices may, if the constitutions allow it, be employed in the work of the community, but only for the purpose of completing their training, and may not be employed to supply the want of teachers or nurses; (iii) if the constitutions allow the novices to be sent outside the house of novitiate in the second year, this may be done for the purpose of the further training of the novices, but they may not be sent out to supply the want of professed religious; (iv) for two months prior to the making of profession, the novices must be at the house of novitiate, and must be free from all employment which interferes with their immediate preparation for profession (November 3, 1921; *Acta Ap. Sedis,* XIII, 539).

(*b*) Canon 542 rules that persons who have adhered to a non-Catholic sect cannot be validly received into the novitiate. The Holy See was requested to declare whether it meant converts from heresy or schism, who were born in heresy or schism, or Catholics who had fallen away from the faith and belonged to a non-Catholic sect?

Answer: It means Catholics who have fallen away and joined a non-Catholic sect (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 477).

(*c*) If, while retaining their own Rite, Orientals ask to be admitted into the novitiate of a religious community of the Latin Rite for the purpose of preparing themselves to establish religious houses and provinces of an Oriental Rite, the permission of the Holy See is not required for admission to the novitiate (Committee, November 10, 1925; *Acta Ap. Sedis,* XVII, 583).

(*d*) What is to be done if the religious superior or the rector of a seminary or college refuses to issue sworn testimonial letters as required by Canon 545, § 1, when requested by the superior of an organization which desires to receive the postulant? *Answer:* The precept of the Code must be observed, and, if there is question of diocesan or of laical institutes (either colleges or seminaries), the local Ordinary shall proceed against the rector or superior who refuses to issue sworn letters with penalties, even the deprivation of office; in case of clerical religious organizations or religious Orders, the supreme superior shall proceed against the rector or superior in the same manner as the local Ordinary. If, nevertheless, sworn testimonials cannot be obtained, the matter is to be referred to the Sacred Congregation (Sacred Congregation of Religious, November 21, 1919; *Acta Ap. Sedis,* XII, 17).

(*e*) In religious Orders and congregations of women the local Ordinary must examine the candidates before their admission to the novitiate, before their profession of the first vows, and before they take perpetual vows (cfr. Canon 552). The bishop of a certain diocese explains that it had been the custom for several centuries in his diocese to demand a tax for this work from the religious communities, and he asks whether that custom may continue? *Answer:* No, the custom may not be continued (Sacred Congregation of Religious, March 20, 1922; *Acta Ap. Sedis,* XIV, 352).

(*f*) Concerning the reckoning of the time of the year of novitiate (cfr. Canon 555), the Holy See was asked to decide whether the year is to be reckoned in accordance with Canon 34, § 3, n. 3, and whether that reckoning is obligatory under pain of invalidity of the profession. *Answer:* Canon 34, § 3, is to be applied, so that the first day (i.e., the day of reception) does not count, and the year is not completed until after the day of the same number; this reckoning of the year is prescribed under pain of invalidity of the profession (Committee, November 12, 1922; *Acta Ap. Sedis,* XIV, 661).

(*g*) In accordance with Canon 567 and Canon 578, n. 1, have novices and temporarily professed religious who die, the right to the same suffrages as members who die in solemn or perpetual simple

vows, even though the constitutions ordain otherwise? *Answer:* Yes; the Orders and congregations shall in the revision of their constitutions (prescribed by Decree of the Sacred Congregation of Religious, June 26, 1918) determine the suffrages, but they must be the same for all, novices and professed members (Committee, October 16, 1919; *Acta Ap. Sedis*, XI, 477).

(*h*) The Decree of the Sacred Congregation of Religious, September 10, 1912, allowing the novices who become dangerously ill to make profession though they have not yet completed the novitiate, is still in force, but the profession is of no juridical value in case the novice survives the danger (Sacred Congregation of Religious, December 30, 1922; *Acta Ap. Sedis*, XV, 156).

(*i*) Canon 569 provides that the novices before profession may freely dispose of the use of their goods and the revenue derived from them, which disposition is to last for the time that they remain in vows. The constitutions which have been approved before the promulgation of the Code are to be observed, though they deprive the novices of the right to dispose of the use and the revenue of their goods, or restrict that right, or determine what is to be done concerning the use and the revenue (Committee, October 16, 1919; *Acta Ap. Sedis*, XI, 478).

The permission of the Holy See is required for changing the disposition concerning the use and revenue of their goods if the change is done for a considerable amount in favor of the religious community (Committee, May 15, 1936; *Acta Ap. Sedis*, XXVIII, 210).

(*j*) The novitiate is interrupted by an absence of over thirty days (cfr. Canon 556), even if this happens through transfer from one novitiate to another (Com., July 13, 1930; *Acta Ap. Sedis*, XXII, 365).

(*k*) If the constitutions of a Religious organization prescribe two years of novitiate, an Apostolic Indult is required to transfer the canonical year to the second year of novitiate. In diocesan Religious Congregations the local Ordinary can dispense with the second year of novitiate if the Constitutions do not require two years for validity of the profession (Committee, February 12, 1935; *Acta Ap. Sedis*, XXVII, 92).

(25) Concerning Religious Profession.

(*a*) In some constitutions of religious congregations of Papal law no mention is made in the formula of profession of the superioress, but only of the bishop or his delegate. He accepts the profession in accordance with Canon 572, n. 6 through a legitimate mandate by the constitutions (Committee, March 1, 1921; *Acta Ap. Sedis*, XIII, 178).

(*b*) Must lay brothers in religious Orders who had made simple vows before the Code became law make solemn profession after three

years' simple vows and at the age of twenty-one? *Answer:* Their solemn profession is governed by Canons 573–574 (Sacred Congregation of Religious, October 6, 1919; *Acta Ap. Sedis,* XI, 420).

(*c*) In religious congregations or institutes in which the constitutions prescribe annual vows after the novitiate, may men liable for military service be admitted to the yearly professions? *Answer:* Yes, but with the provision that the annual vows cease on the day on which the men who have been called to military service are actually placed under military discipline (Sacred Congregation of Religious, November 30, 1919; *Acta Ap. Sedis,* XII, 73).

(*d*) In some religious organizations of simple vows the vows are made under this or a similar condition, "for so long as I shall live in the congregation," so that the professed member automatically becomes released from his vows, when he either leaves of his own free will or is dismissed. The question arises whether, in accordance with Canon 574, the religious must make three years' temporary vows, and whether, in the dismissal of those who made profession under the above condition, the formalities prescribed by the Code for the dismissal of religious in temporary vows (cfr. Canons 647–648) or those of the dismissal of perpetually professed are to be observed? *Answer:* They need not make three years' temporary vows, and in the dismissal of those who have already made vows under the above condition Canons 646–648 are to be observed (Committee, March 1, 1921; *Acta Ap. Sedis,* XIII, 177).

(*e*) With reference to the moneys accruing to the religious on account of military service during the war, the Holy See issued the following answers to inquiries:

(i) May solemnly professed religious rightfully retain for themselves any of the money which they have received or shall receive through military service, or are they obliged to give all of it to their Order? *Answer:* They must give all of it to their Order.

(ii) May solemnly professed religious, who by Apostolic Indult are rendered capable of acquiring goods after their profession, appropriate any of the money spoken of above without the consent and express permission of their major superior? *Answer:* No, they may not.

(iii) Are religious in simple vows, either perpetual or temporary, whose constitutions exclude all further acquisition of temporal goods after their profession, obliged to give all the said moneys to their religious organization? *Answer:* Yes, those who at the time of military service were bound by vows are obliged to give all moneys to their organization; those whose vows ceased at the time of military service are not obliged.

(iv) May religious in simple vows, either perpetual or temporary, in any religious Order or congregation, whose constitutions do not stand in the way, appropriate for themselves any of the money which they received in pay for their military service, or are they obliged to give to their organization after dismissal from the service whatever they have saved? *Answer:* If the men in question were bound by vows during the military service, they must give all to their organization; if their vows ceased, they can appropriate some of the money, but they should give their religious organization a fair compensation.

(v) Where a life pension because of mutilation or debilitation suffered in the war has been given to simply professed religious, or to those spoken of in Canon 673, or to those whose vows or promises remained suspended, does this pension pertain to the respective religious organization or society? *Answer:* If the religious were bound by vows during the military service, the pension belongs to the religious organization; in the case of all others, it belongs to the religious, but they are obliged to give it to their organization as long as they remain in it.

(vi) Do any rewards gained by military distinctions in the war belong to the former soldiers, or rather to their religious organization? *Answer:* They belong to the religious organization unless the men were freed from the vows during the military service.

(vii) Does the money given to each soldier on his discharge from the war service as a solemn manifestation of the gratitude of the public belong to the religious organization? *Answer:* Yes, it belongs to the religious community, except in the case of those who were freed from the vows during the war.

(viii) Are religious who disposed of the money even in favor of third persons in violations of the above decisions, obliged to make restitution? *Answer:* They are obliged to make restitution, unless the religious acted with the reasonably presumed permission of his superior (Sacred Congregation of Religious, February 25, 1922; *Acta Ap. Sedis,* XIV, 196).

(*f*) Before solemn profession religious who are studying for the priesthood must take the following oath before their superior; in communities with simple vows and in societies living after the manner of religious, this oath is to be taken before subdeaconate before their superior. Investigations are prescribed by which the superior is to make certain of the required qualifications of the men destined for the priesthood, and before any Order, Congregation or Society admits them to the first vows or promises, the superior must demand that each candidate give a declaration in writing in which he expressly states that he believes he has a vocation to the religious and clerical

state, and that he has the firm purpose to devote himself permanently to the clerical life in the religious state, and therefore asks to be admitted to the first vows or promises. This petition and declaration must be preserved in the archives of the religious organization. The oath before solemn profession or before the subdeaconate is as follows:

"Ego subsignatus N. N., alumnus Ordinis vel Congregationis N. N., cum petitionem Superioribus exhibuerim pro recipiendo subdiaconatus ordine, diligenter re perpensa coram Deo, iuramento interposito, testificor: (1) Nulla me coactione, seu vi, aut nullo impelli timore in recipiendo eodem sacro ordine, sed ipsum sponte exoptare, ac plena liberaque voluntate eumdem cum adnexis oneribus amplecti velle. (2) Fateor mihi plene esse cognita cuncta onera ex eodem sacro ordine dimanantia, quæ sponte amplector, ac Deo opitulante propono me toto vitæ curriculo diligenter servare. (3) Quæ castitatis voto ac cœlibatus lege præcipiuntur, clare me perspicere testor, eaque integre servare usque ad extremum vitæ, Deo adiuvante, firmiter statuo. (4) Denique sincera fide spondeo iugiter me fore, ad normam sacrorum canonum, obsequentissime obtemperaturum iis omnibus quæ mihi a Præpositis, iuxta Ecclesiæ disciplinam, præcipientur, paratus virtutum exempla, tum opere, cum sermone, aliis præbere, adeo ut tanti officii susceptione retributionem a Deo promissam accipere merear. Sic testor ac iuro, super hæc Sancta Dei Evangelia, quæ manu mea tango." Place and date and signature of the one taking the oath are to be added (Sacred Congregation of Religious, December 1, 1931; *Acta Ap. Sedis,* XXIV, 74–81).

(26) Concerning the Obligations of Religious.

(*a*) Does the law of Papal enclosure, spoken of in Canons 597–600, apply to nuns whose vows were originally solemn, but have been reduced to simple vows by the Holy See in some countries? *Answer:* No, they are not under that law because of the Papal Indult which still remains in force (Committee, March 1, 1921; *Acta Ap. Sedis,* XIII, 178).

(*b*) In virtue of Canon 610, which prescribes that in all religious organizations of women the Conventual Mass corresponding to the Office of the Day is to be said daily and also wherever possible in organizations of women, is the Conventual Mass of obligation in Orders of men and women with solemn vows only, or also in the religious houses of communities with simple vows, whose constitutions approved by the Holy See impose the obligation of the choir? *Answer:* It is of obligation also in the latter religious organizations (Committee, May 20, 1923; *Acta Ap. Sedis,* XVI, 313).

(27) Concerning the Privileges of Religious.

(*a*) Canon 621, § 1, applies to Mendicants strictly so-called only; as to the obtaining of the Ordinary's permission for soliciting alms, Canon 621, § 1, answers the question (Committee, October 16, 1919; *Acta Ap. Sedis*, XI, 478).

An official declaration of the meaning of the phrase, "exclusa in posterum qualibet communicatione" (Canon 613, § 1), has been given. This phrase does not abolish privileges legitimately acquired and peacefully possessed before the promulgation of the Code (Pontifical Committee, December 30, 1937; *Acta Ap. Sedis*, XXX, 73).

(*b*) The local Ordinary has the right in virtue of Canons 631, § 3, 535, § 3, n. 2, 533, § 1, nn. 3-4, to demand an account of the administration of lands and legacies of a parish of religious incorporated *pleno iure*, spoken of in Canon 1425, § 2, without prejudice to the rights of the religious pastor given to him by Canon 630, § 4, and to the religious superior by Canon 1550 (Committee, July 25, 1926; *Acta Ap. Sedis*, XVIII, 393).

(28) Concerning the Transition to Another Religious Organization.

(*a*) When a professed religious obtains permission from the Holy See to transfer to another religious organization, must he wear the habit of the new organization during the novitiate, or keep the habit of the first? *Answer:* He must wear the habit of the new organization (Sacred Congregation of Religious, May 14, 1923; *Acta Ap. Sedis*, XV, 289).

(*b*) Is the vote of the Chapter on the admission to solemn or simple perpetual profession of a professed member of another organization who has obtained leave to join another organization (cfr. Canon 634) decisive or merely consultive? *Answer:* The vote is decisive (Committee, July 14, 1922; *Acta Ap. Sedis*, XIV, 528).

(*c*) The Holy See was asked whether (1) the local Ordinaries have authority to permit the transition of nuns with simple vows (whose organization had at one time solemn vows which have been reduced to simple vows by the Holy See) to another autonomous monastery of the same Order, and (2) whether the local Ordinaries may at least permit a temporary transition so that the nuns enjoy all the rights and privileges of the nuns of the monastery to which such temporary transition is made during the time that they stay there? The answer is in the negative, wherefore permission of the Holy See is required in both cases (Sacred Congregation of Religious, November 9, 1926; *Acta Ap. Sedis*, XVIII, 490).

(29) Concerning Egress from a Religious Organization.

(*a*) May a religious who obtains an indult of secularization or a dispensation from simple vows refuse to accept the indult or the dispensation, when he receives notice of them from the local superior, even though the Superior General has already issued the document of execution of the rescript in accordance with Canon 56? *Answer:* Yes, he may refuse to accept either indult or dispensation, provided the superiors have no grave reasons to the contrary; if they have such reasons, they shall refer the matter to the Sacred Congregation (Sacred Congregation of Religious, August 1, 1922; *Acta Ap. Sedis,* XIV, 501).

(*b*) Does Canon 640 comprehend all religious who have obtained an indult of secularization either from the Apostolic See or from the local Ordinary? *Answer:* It comprehends all.

(*c*) Are religious who have obtained an indult of temporary secularization (*exclaustratio*) obliged to adhere to the conditions stipulated in Canon 639? *Answer:* They are obliged, but the Ordinary has power to permit the temporarily secularized religious for special reasons to wear the religious habit (Committee, November 12, 1922; *Acta Ap. Sedis,* XIV, 662).

(*d*) If the dowry is not large enough to provide for the present needs of a Sister who leaves the community, is the religious organization freed from all further liability upon returning the dowry to her, or, in accordance with Canon 643, § 3, is the community obliged to render additional aid to the Sister? *Answer:* The community is obliged to render further assistance (Sacred Congregation of Religious, March 2, 1924; *Acta Ap. Sedis,* XVI, 165).

(30) Concerning Dismissal from Religious Organizations.

(*a*) Canon 647, § 2, ordains that a religious in temporary vows, who has received the decree of dismissal from his superiors, has the right to have recourse to the Apostolic See, and that pending such recourse the decree of dismissal is suspended, and has no force in the interval. Within what time must that recourse be taken? *Answer:* The religious has ten days from the notification of his dismissal within which he may have recourse (Sacred Congregation of Religious, July 20, 1923; *Acta Ap. Sedis,* XV, 457).

(*b*) Canon 681 prescribes that, in the dismissal of members of societies without vows, Canons 646–672 are to be observed. Now, these Canons have various precepts for the various cases of temporarily and perpetually professed religious. Wherefore, the question arises as to the application of Canon 681 which speaks of persons who have

no vows. *Answer:* If the bond is temporary, the Canons which treat of the dismissal of temporarily professed; if the bond is perpetual, the Canons on the dismissal of perpetually professed religious must be applied (Committee, March 1, 1921; *Acta Ap. Sedis,* XIII, 177).

(*c*) Do Canons 2386, 2387, 2389, 2410, 2411, and 2413 apply to clerical societies without vows? *Answer:* Yes, Canons 2386, 2387, 2389 apply; Canon 2410 applies, if the society enjoys the privilege to issue dismissorial letters to its subjects; Canon 2411 applies as to its first part, but as to the rest of this Canon, the constitutions of each society must be followed; Canon 2413 applies (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 347).

(*d*) If a religious in any Order or congregation becomes insane during the three years of simple profession so that he cannot be admitted to solemn or perpetual vows, he cannot be dismissed and the organization must take care of him (Sacred Congregation of Religious, February 5, 1925; *Acta Ap. Sedis,* XVII, 107).

(*e*) The declaration by the Superior of the commission of one of the crimes enumerated in Canon 646, § 2, is not necessary in order that the offender be considered *ipso facto* legitimately dismissed. Religious who are dismissed without being freed from the vows must, when thoroughly amended, be received again by the community (cfr. Canon 672, § 1), but those who are *ipso facto* dismissed in virtue of Canon 646 do not enjoy the favor of Canon 672, § 1 (Committee, July 30, 1934; *Acta Ap. Sedis,* XXVI, 494).

(31) Concerning Associations of Clergy and Laymen.

(*a*) Desirous to abolish certain abuses, a certain bishop asks the Holy See whether he can make use of the rights and means enumerated in Canons 707 sq., in connection with the Society of St. Vincent de Paul established in his diocese. *Answer:* The society is not an ecclesiastical one and the bishop has only those rights he has over the faithful generally (Sacred Congregation of the Council, November 13, 1920; *Acta Ap. Sedis,* XIII, 135).

(*b*) The Holy See has declared (1) that Canon 711, § 2, is not to be understood in such a sense that the local Ordinaries are strictly bound to institute in every parish the Confraternity of the Blessed Sacrament, but that they may, according to circumstances, establish a pious union or sodality of the Blessed Sacrament, (2) that to the Archconfraternity of the Blessed Sacrament erected at Rome only confraternities strictly so-called are *ipso iure* aggregated, not pious unions and other sodalities of the Blessed Sacrament (Committee, March 6, 1927; *Acta Ap. Sedis,* XIX, 161).

(*c*) A new Rule for religious communities of the Third Order of St. Francis has been approved (Apostolic Constitution of His Holiness Pope Pius XI, October 4, 1927; *Acta Ap. Sedis*, XIX, 361–367).

(*d*) The Holy See has issued a warning against the Young Mens' Christian Association and an exhortation to the bishops of the Catholic Church to keep Catholics from joining the Association because it leads to rationalism and religious indifferentism (Holy Office, November 5, 1920; *Acta Ap. Sedis,* XII, 595).

(*e*) The Pious Union of the Clergy for the Missions is to be established by the Ordinary in every diocese. Its purpose is through the priests to stimulate interest in the foreign missions among the Catholic people. The means of helping the missions should consist of prayers, study of missionary activities, meetings to exchange knowledge of the missions and their needs and to devise means for the support of the missions, fostering of vocations for missionary work, sermons and other ways of informing the Catholic people of the work of the missions and how that work can be promoted, while soliciting financial aid for the missions.

Priests, secular and religious, and students of theology may become members of the Union. Enrollment is to be made by the Diocesan Council or the Regional Council of the Union or, if these are not established, by the Sacred Congregation of the Propaganda. The enrollment carries with it the obligation to work for the purposes of the Union and entitles members to the spiritual favors and privileges. Ordinary members are those who perform the good works and promote interest in the missions and pay the annual fee specified by the Council of the Union. Perpetual members are those who, besides working for the interests of the missions, donate once a larger sum specified for perpetual membership by the Council.

The Union is to have a Regional President and Council. The Sacred Congregation of the Propaganda appoints the Regional President; the local Ordinaries propose names for the President to the Sacred Congregation. The Council is appointed by the President after consultation with the local Ordinaries if he wants to appoint secular priests, or after consultation with the Superiors of the respective religious organizations if he wants to appoint religious. Each diocese is to have a Diocesan Council headed by a Diocesan Director. The Diocesan Director and the members of the Council are appointed by the local Ordinary and are removable at will. Regulations are given for meetings of the whole Union of a country under the presidency of the Regional President, and for meetings of Diocesan Directors.

The following spiritual favors are granted to the members:

(1) a Plenary Indulgence under the usual conditions on the feasts

of the Epiphany, Holy Apostles, St. Michael, St. Francis Xavier, once a month on a day chosen by each one, at the hour of death;

(2) an indulgence of one hundred days for every good work done for the missions;

(3) the faculties, provided the member of the Union be approved for the hearing of confessions, (*a*) to bless outside the City of Rome with one sign of the cross crowns, rosaries, crosses, crucifixes, medals and statuettes with the Apostolic Indulgences (cfr. *Acta Ap. Sedis,* 1922, 143); (*b*) to bless with one sign of the cross crowns made up after the type of the rosaries of the Blessed Virgin with the indulgences of the Crozier Fathers; (*c*) to bless and impose under the rites prescribed by the Church the scapulars of the Passion, Immaculate Conception, Blessed Trinity, Sorrowful Mother, and Mount Carmel; (*d*) to bless with one sign of the cross crucifixes with the indulgences of the Way of the Cross; (*e*) to bless with one sign of the cross crucifixes with the indulgence of a happy death;

(4) the privilege of the personally privileged altar four times a week provided one has not a similar indult for some other day;

(5) the faculty to bless the Crown of the Seven Dolors with all indulgences granted for these crowns by the Supreme Pontiffs, provided the member of the Union is approved for confessions;

(6) the faculty, provided the member is approved for confessions, to bless and impose with one formula the scapulars which they as members of the Union have the faculty to bless;

(7) the faculty to impose the scapulars spoken of above without the obligation to inscribe the names on the rolls of the Confraternity;

(8) the faculty to anticipate Matins and Lauds from noon, provided they have finished the Office of the Day (Sacred Congregation of the Propaganda, April 4, 1926; *Acta Ap. Sedis,* XVIII, 230).

(32) Concerning Baptism.

(*a*) Does a child baptized at the request of its parents by a minister of another rite, in violation of the precept of Canon 756, belong to the rite in which it is baptized or to the rite in which it should have been baptized in accordance with the precept of Canon 756? *Answer:* As the case is explained, the child belongs to the rite in which it should have been baptized (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 478).

(*b*) The question was asked whether and how the blessing of the baptismal font is to be done in parish churches which have branched off from an original parish, and whether the custom of blessing the baptismal font once a year only, on Holy Saturday, may be tolerated?

Answer: The font must be blessed in those churches in the manner prescribed by the rubrics of the Roman Missal, and the blessing must take place on Holy Saturday and on the vigil of Pentecost; contrary custom cannot be tolerated (Sacred Congregation of the Council, June 10, 1922; *Acta Ap. Sedis,* XV, 225).

(*c*) If a sponsor desires to act by proxy, he himself should appoint his representative. The custom that leaves the appointment to the parents of the infant or to the baptizing priest, the sponsor being unconcerned in the matter, makes sponsorship doubtful, and therefore the custom should be abolished (Sacred Congregation of the Sacraments, July 29, 1925; *Acta Ap. Sedis,* XVIII, 43–47).

(*d*) Does a church, which before the promulgation of the Code enjoyed the legitimate right of having a baptismal font to the exclusion of other parish churches (of the same place), retain a cumulative right with the churches which by precept of Canon 774 have the right to a baptismal font? *Answer:* Canon 774 is to be understood in such a sense that the church which formerly had an exclusive right to all the baptisms of a city or town has now a cumulative right with all the other parish churches of the city or town, even with the newly erected parish churches. For the future, however, no parish church can by custom acquire a cumulative right of the baptismal font (i.e., the right to baptize persons domiciled in other parishes of the same city or town at the option of those who present themselves or who present children for baptism). That custom is condemned as a corruption of law. Besides, the church which has the right to baptize persons from any parish of a city or town, must, in accordance with Canon 778, notify the pastor of the domicile of the administration of baptism (Committee, November 12, 1922; *Acta Ap. Sedis,* XIV, 662).

(*e*) Does the term "illegitimates" in Canon 777 comprehend all illegitimate persons, even adulterous, sacrilegious and other spurious offspring, so that it is permissible to enter the names of their parents in the baptismal records? *Answer:* The names of the parents must be entered in such a manner that all occasion for defamation is avoided; in special cases, however, recourse should be had to the Sacred Congregation of the Council (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 528).

(*f*) Concerning Baptism in private houses, the Holy See has been requested to decide whether it is in harmony with the law of the Code to give Solemn Baptism in private houses to infants who are not in danger of death, but cannot without danger be brought to church. The Sacred Congregation of the Sacraments prefaces its answer with the observation that every man or woman may give Private Baptism when there is positive danger that an infant may die before the priest can

be had. If a priest or deacon baptizes in danger of death, Canon 759, § 1, directs that he confer Private Baptism and employ the ceremonies which follow Baptism, if time permits. The rest of the ceremonies of Solemn Baptism are to be later on supplied in church.

As to Baptism by the priest at a private house when there is no danger of death, the Sacred Congregation repeats what Canon 776 states, namely, that the bishop may in some extraordinary case permit Solemn Baptism in a private house. It is committed to the prudent judgment of the local Ordinary to decide in each individual case whether the particular circumstances are of such a serious nature as to allow an exception from the general rule that Solemn Baptism is not to be conferred in private houses (July 22, 1925; *Acta Ap. Sedis,* XVII, 452). A former declaration of the Sacred Congregation of Rites, January 17, 1914 (*Acta Ap. Sedis,* VI, 32), answered in the affirmative the question whether Baptism given at home with permission of the local Ordinary outside the danger of death and urgent necessity is to be administered with all the ceremonies. The right of the local Ordinary to permit Baptism with all the ceremonies of Solemn Baptism in private houses is limited by the Code (cfr. Canon 776) and the above declaration to permission in each individual case and to extraordinary circumstances.

(33) Concerning Recording of and Age for Confirmation.

In a certain diocese it had been the custom for several centuries for the Canon Sacristan to make up and keep one Confirmation record of all the persons confirmed in the diocese. After the promulgation of the Code, the Ordinary of the diocese directed the Canon Sacristan to send a copy of the Confirmation record to the various pastors. The Canon Sacristan objected to the decree of the Ordinary, and had recourse to the Holy See. *Answer:* The precept of Canon 798 by which each pastor is obliged to keep the record of Confirmation is to be observed; the Canon Sacristan is to be freed from his duty of keeping the Confirmation record [Sacred Congregation of the Council, (*in Causa Melphictensi*), February 8, 1919; *Acta Ap. Sedis,* XI, 280].

Concerning the age of the persons to be confirmed, Canon 788 is to be understood in such a way that Confirmation in the Latin Church is not to be conferred until about the seventh year of age except in the cases mentioned in the same Canon (Committee, June 16, 1931; *Acta Ap. Sedis,* XXIII, 353). Furthermore, the Sacred Congregation of the Sacraments states that ordinarily Confirmation should follow Baptism because it is the completion and perfection of the Sacrament of Baptism, and Holy Communion should come after Confirmation. Never-

theless, one should not think that the children who have reached the years of discretion and are sufficiently instructed are to be prohibited from receiving Holy Communion though they have not yet had an opportunity to receive Confirmation (Sacred Congregation of the Sacraments, June 30, 1932; *Acta Ap. Sedis,* XXIV, 271).

(34) Concerning the Sacrifice of the Mass.

(*a*) With reference to the Eucharistic fast, priests who have to say two Masses on Sundays or holydays of obligation, or one Mass at a very late hour, or who on account of work, long distance of travel, poor health, and other reasons cannot keep the fast without great harm to themselves, may apply to the Holy See for dispensation, and, if necessary, the Holy See shall grant habitual faculties to the bishops to give the dispensation. Even now, in more urgent cases where recourse to the Holy See cannot be had, the faculty is granted to the bishops to dispense with the law of the Eucharistic fast. Liquid food only shall be allowed, to the exclusion of intoxicants. The bishop who in an urgent case grants the dispensation, shall as soon as possible inform the Holy See (Holy Office, March 22, 1923; *Acta Ap. Sedis,* XV, 151).

(*b*) May priests who have obtained a dispensation from the Eucharistic fast take the ablution in the first Mass, if they have to say another Mass? *Answer:* Yes, they may take the ablution (Holy Office, May 2, 1923; *Acta Ap. Sedis,* XV, 585).

(*c*) The use of the so-called Gothic vestments for Holy Mass is a deviation from the established use of the Roman vestments. Without consulting the Holy See, it is not lawful to deviate from the present established custom (Sacred Congregation of Rites, December 9, 1925; *Acta Ap. Sedis,* XVIII, 58).

(*d*) With reference to the altar breads, the Holy See declares that the custom of getting fresh altar breads once only in two or three months is to be condemned, and the precept of the Roman Ritual (tit. IV, cap. 1) and of the Code (Canons 815 and 1272) is to be observed (Sacred Congregation of the Sacraments, December 7, 1918; *Acta Ap. Sedis,* XI, 8).

On March 26, 1929, the Holy See issued an Instruction concerning altar breads, altar wine, the distribution of Holy Communion, and the reservation of the Blessed Sacrament during the last three days of Holy Week, and gave the following rules to the Ordinaries:

(1) In accordance with the remarks, precepts and decrees of the Instruction, the Ordinaries shall as soon as possible command that

these things be most faithfully observed by the rectors of churches, and under the leadership of the rectors by others who serve the altar, in order that all danger of nullity of the Sacrifice of the Altar be removed and all occasion of irreverence be eliminated.

(2) They shall, therefore, see that in each diocese or city or town, according to the nature of the various places, there be not wanting qualified persons above all suspicion (especially religious of either sex), from whom the rectors of churches can obtain the altar breads and altar wine which can be used with a safe conscience, unless they make these things themselves.

(3) In reference to the hosts, the rectors shall see that the fragments which so easily adhere to the hosts are removed, and that, before Holy Mass is said, they are carefully brushed off, and that, if there is a very large number of hosts to be consecrated, they are gently shaken in a sieve.

(4) They shall employ special care to see that only fresh hosts are consecrated, and that the sacred particles kept in the pyx are frequently renewed (Canon 1272; *Rituale Romanum,* tit. IV, cap. I, n. 7). They should endeavor to ensure that the tabernacle in which the Holy Eucharist is reserved be protected as much as possible against dampness and against extreme cold air, for under the effect of humidity the hosts decay and under the effect of frost they become brittle.

(5) In the distribution of Holy Communion to the faithful there should be used—besides the white linen cloth spread before the communicants, as required by the rubrics of the Missal, the Ritual and the *Cæremoniale Episcoporum*—a plate made of silver or of other gold-plated metal, without any engravings on the inside but plain, which is to be held by the people themselves under their chins, with the exception of the case when the bishop distributes Holy Communion, or a prelate who uses the pontificials, or in a Solemn High Mass, when a priest or deacon assists and holds the paten under the chins of the communicants.

(6) The faithful are to be earnestly admonished that, when they hold the plate under their chins and then give it to the priest or pass it on to another communicant, they shall not hold it slanting or turn it over, lest the fragments, if there be any, fall off and be lost.

(7) The fragments which are found on the plate after the Communion of the faithful shall, when Communion is distributed during the Mass, be very carefully collected by means of the index finger and dropped into the chalice; if Holy Communion is given outside of Mass, they shall be put into the ciborium. It is not the intention of the Sacred Congregation to condemn plates (of whatever shape they may be) which at present are used in some churches, provided they be of metal

and are not ornamented with engravings inside and are otherwise practical for catching the fragments.

(8) The Ordinaries shall insist that the rectors of churches shall be most solicitous to keep altars and also the sacred utensils clean, especially those which come into contact with the Blessed Sacrament; and they should remember that it is a grave matter of conscience to observe the aforesaid prescriptions.

(9) In reference to the sacred particles to be reserved during the last three days of Holy Week for the benefit of the sick, the Ordinaries should understand the intention of the rubrics and the Decrees of the Sacred Congregation of Rites; they should remember that these Hosts are not kept for public veneration, but that on the contrary the latter is forbidden. Nevertheless, great care must be taken that due honor and respect is shown to the Eucharistic Sacrament, and first and foremost in regard to the place where it is to be reserved.

Their Eminences, the Cardinals of the Sacred Congregation of the Sacraments, moreover command that the local Ordinaries, within one year from the reception of this Instruction, inform this Sacred Congregation concerning those things which they have seen fit to ordain towards the execution of the precepts herein contained and of the abolition of inveterate abuses that may exist (Sacred Congregation of the Sacraments, March 26, 1929; *Acta Ap. Sedis,* XXI, 631).

(*e*) May the people who assist at Mass answer the priest in place of the server? *Answer:* What is in itself permissible is not always advisable, and, as confusion and disturbance may be caused to both priest and people by this manner of answering the priest, the common practice of having a server answer the priest should rather be followed.

It was further asked, whether the people who assist at Mass may read with a loud voice the Secrets, Canon and the words of consecration. *Answer:* That custom may not be retained because the Canon of the Mass should be read in a low voice by the priest, and it is not proper that the people read it in a loud voice (Sacred Congregation of Rites, August 4, 1922; *Acta Ap. Sedis,* XIV, 505).

(*f*) Are the rubrics of the Missal which prescribe that the server sound a small bell at the Sanctus and at the Elevation of the Host and the Chalice, to be applied also to *Missæ Cantatæ,* to Solemn High Masses and to Pontifical Masses, concerning which Masses the rubrics are silent as to the ringing of a bell? *Answer:* Yes, the bell should be sounded also in these Masses, and, if the custom of some churches differs from the general practice and the common interpretation of the rubrics, it should be brought into conformity with the general practice, unless in place of a small bell they employ another appropriate signal. It is advisable also that, in accordance with the com-

mon practice of the Church, the bell be sounded shortly before the Consecration to attract the attention of the people (especially of those who are at a distance from the altar) to the impending solemn moment of the Mass [Sacred Congregation of Rites (*in Causa Romana*), October 25, 1922; *Acta Ap. Sedis,* XIV, 557].

(*g*) May a priest, who because of poor eyesight or other just cause has obtained an Indult from the Holy See to say some votive Mass or the daily Mass of the Dead, say three Masses on All Souls' Day, using the formula of the *Missa quotidiana defunctorum?* Furthermore, may the same priest say three Masses on Christmas Day, if he has permission to say daily the votive Mass of the Blessed Virgin or some other votive Mass? *Answer:* In both cases he may say three Masses (Sacred Congregation of Rites, January 26, 1920; *Acta Ap. Sedis,* XII, 122).

(*h*) Concerning the time and place of Holy Mass, the Apostolic See was requested to declare whether the faculty of the Code in Canon 822, § 4, which grants to the Ordinary faculty to allow the celebration of Holy Mass in private houses in some individual and extraordinary case, is to be interpreted in a restrictive sense. *Answer:* Yes (Committee, October 19, 1919; *Acta Ap. Sedis,* XI, 478).

(*i*) May Canon 822, which grants faculty to the local Ordinary to allow the celebration of Holy Mass outside churches and chapels destined for the celebration of the divine mysteries, be interpreted in such a sense that the Ordinary has faculty to allow the saying of Mass outside the proper places also on the occasion of a profane celebration and political gatherings? *Answer:* No, he cannot (Sacred Congregation of the Sacraments, July 26, 1924; *Acta Ap. Sedis,* XVI, 370).

(*j*) The local Ordinary may not permit the celebration of Holy Mass in a private house in the room where the corpse is laid out, except in some extraordinary case and for a good and sufficient cause. The Holy See declares that an "extraordinary case" and a just and sufficient cause exists on the occasion of the death of a local Ordinary, or a member of the family of a prince, or of a person otherwise prominent for merits and benefactions towards the Church or the State or for very liberal donations towards the poor and needy, or of a person who had received from the Holy See the privilege of having Holy Mass said in his private house. Not more than three Masses may be allowed by the local Ordinary, even in the case of a bishop. The regular funeral services in church may not be omitted (Sacred Congregation of the Sacraments, May 3, 1926; *Acta Ap. Sedis,* XVIII, 388).

(*k*) Concerning midnight Mass on extraordinary occasions, the

Holy See has granted general permission on the occasion of Eucharistic Congresses, if the Blessed Sacrament remains exposed for public veneration throughout the whole night, that one Mass be said at midnight and at it all who assist may receive Holy Communion. The priest who takes part in the adoration at night may say Mass immediately after the one Mass celebrated for the people, or one hour after midnight. As to midnight Mass on other occasions, the Sacred Congregation of the Sacraments can grant permission under the following conditions: (1) on extraordinary occasions only; (2) the Mass may not begin until half an hour after midnight; (3) the adoration at night must be continued for about three hours; (4) all danger of irreverence must be removed (Sacred Congregation of the Sacraments, April 22, 1924; *Acta Ap. Sedis,* XVII, 100).

(35) Concerning Mass Stipends.

(*a*) If the local Ordinary has obtained an Indult from the Holy See by which his priests may take a stipend for the second Mass on Sundays and holydays of obligation, or an Indult by which the pastors are released from the obligation of applying the Mass for the people, may he oblige the priests to apply the bination Mass or the Mass for the people in favor of a pious cause? *Answer:* Yes, he may.

In that case, may the bishop demand only the amount of the stipend as fixed by the law of the diocese and leave the excess to the priests? *Answer:* If the stipend has been legitimately fixed, the entire stipend must be given to the pious cause, but the local Ordinary has the faculty to assign a certain portion of the stipend to the priests for reason of the inconvenience and labor. If the offering for the Mass has not been fixed by law (e.g., if a certain number of Masses are to be said by the holder of a benefice, in which case there is no fixed stipend for each Mass), the ordinary stipend of the diocese is to be given to the pious cause, and the Ordinary may allow the priest to retain a portion of the stipend for reason of the inconvenience and labor [Sacred Congregation of the Council (*in Causa Viglevanensi*), May 8, 1920; *Acta Ap. Sedis,* XII, 536]. In another case the same Sacred Congregation ruled that, if the stipend for the bination Mass is larger than the ordinary stipend and the excess is given to the priest for personal reasons or because of unusual labor and inconvenience attached to saying the Mass (e.g., a very late hour, a distant place), the excess beyond the ordinary stipend need not be given to the pious cause (November 10, 1917; *Acta Ap. Sedis,* X, 368).

(*b*) In a certain diocese it was the custom for the pastor to pay the assistants a fixed sum of money each month, and for the assistants

to apply Mass for the intention of the pastor, who kept the stipends. One half of the payments was considered to be for the work of the assistants, the other half for the Masses which they had said. The Sacred Congregation of the Council declares that the custom may be tolerated, but the Ordinary of the diocese (who was at that time an Apostolic administrator) should rather try to introduce the diocesan statute by which the assistants receive a certain salary, to be supplemented by Mass stipends which should be given to them entire [Sacred Congregation of the Council (*in Causa Montisvidei et aliarum*), January 10, 1920; *Acta Ap. Sedis,* XII, 70].

(*c*) Is it permissible, with the consent of the persons who make the offerings, to combine two or more intentions for High Masses, so that one is sung for the combined intentions in the local church, and the others are celebrated elsewhere for the combined intentions? Furthermore, is it permissible, with the consent of those who make the offerings, to combine two or more intentions for High Masses so that one only is said with greater solemnity for the combined intentions, provided that only the ordinary stipend of the diocese is taken, and the rest of the offerings are given to charities? *Answer:* The Sacred Congregation desires the Ordinary to abolish these practices prudently. In accordance with Canon 836, the people are to be informed by public notice posted in a conspicuous place that not all the High Masses requested can be said in the parish church because of the great number of Masses ordered, but that they will be said in other churches (Sacred Congregation of the Council, July 9, 1921; *Acta Ap. Sedis,* XIII, 501).

(*d*) The Archbishop of Montevideo explains that, in his archdiocese, novena Masses and Gregorian Masses are celebrated with certain exterior solemnities, and a larger stipend than the usual is offered for these Masses. Now, if the pastor has these Masses said by other priests, may part of the stipend be retained by the pastor for his church, because the pastor has considerable trouble in finding priests to say the Masses, has the responsibility for them, and has the work of arranging the more solemn celebration, and besides the Gregorian Masses at times take the place of the funeral Masses? *Answer:* As the matter is explained, no part of the stipend can be retained, but the Sacred Congregation wishes to inform the archbishop that, in the case of Masses which are said with exterior solemnity and Masses which take the place of funeral Masses, he should decree a moderate tax for the benefit of the pastor, which is not to be taken from the stipend but paid in addition to the stipend, and those who make the offerings are to be instructed concerning this matter (Sacred Congregation of the Council, April 16, 1921; *Acta Ap. Sedis,* XIII, 532).

(36) Concerning the Reception of Holy Communion.

(*a*) Must the use of reason that is necessary for the reception of Holy Communion be such that a person is capable of committing mortal sin, or does the use of reason sufficient to commit venial sin suffice for admission to Holy Communion? *Answer:* Canon 854, §§ 2–3, indicates the use of reason sufficient for admission to Holy Communion, and Canon 906 indicates the use of reason sufficient to subject a person to the precept of annual confession (Committee, February 24, 1920; *Archiv für katholisches Kirchenrecht,* CI, 68).

(*b*) Are children who are not yet seven years of age, but who because of their sufficiently developed understanding are admitted to first Holy Communion, subject to the two precepts of annual confession and Holy Communion? *Answer:* They are subject to both laws (Committee, January 3, 1918; *Archiv für katholisches Kirchenrecht,* IC, 62).

(*c*) A woman who lived in public concubinage with one of her relations had been absolved by a missionary and been permitted to go to Holy Communion. The pastor objected to the action of the missionary, and referred the case to the local Ordinary. The latter decreed that the woman shall not be admitted to Holy Communion until she has separated from the man with whom she lived in public concubinage, and has made reparation for the scandal, as prescribed by Canon 855. The missionary referred the case to the Holy See, asking whether the Ordinary had the right to insist on his decree in case the separation could not take place without great difficulty, and the parties had promised to abstain from sinful relations. He suggests that the reparation of scandal is possible by other means than separation (e.g., frequent Communion for a year), and desires to know what the missionaries are to do under similar circumstances. *Answer:* They must obey the decree of the Ordinary (Sacred Congregation of the Council, November 18, 1922; *Archiv für katholisches Kirchenrecht,* CIII, 162).

(*d*) The Holy See was asked whether on sick-calls to people living in the mountains or country far away from a church Holy Communion could be administered, besides to the sick, also to others who cannot that day go to church. The answer was that they may receive provided the local Ordinary gives permission, and he can give it only in individual cases and specified occasions (*per modum actus*), not permanently (cfr. Canons 869 and 822, § 4). To the further question whether the Sacrament of Penance and Holy Communion may be administered to those who are through sickness detained at home, the Sacred Congregation of the Sacraments answered that as far as Holy

Communion is concerned the answer to the first question suffices, and in reference to confession it may be heard provided Canons 910, §§ 1 and 2, and 909, §§ 1 and 2, are observed (July 29, 1927; *Acta Ap. Sedis,* XX, 79).

(*e*) The Holy See has declared that the just and reasonable cause for which Holy Communion may be taken privately to the sick (cfr. Canon 847) is not to be judged by the priest but by the local Ordinary. However, when the Ordinary knows from common experience and opinion that the private carrying of the Blessed Sacrament in his diocese or some places in the same is not considered improper, he should not insist on the public administration by general regulations and by reserving to himself permission in each case for private administration so as to hinder the frequent and even daily Communion of the sick (Sacred Congregation of the Sacraments, January 5, 1928; *Acta Ap. Sedis,* XX, 81).

(*f*) The Holy See was asked whether Holy Communion may be given at the midnight Mass on Christmas, which is said at that hour either by law or by Apostolic Indult. The answer is that Holy Communion may be given unless the local Ordinary forbids it in a particular case for just reasons, according to Canon 869 (Committee, March 16, 1936; *Acta Ap. Sedis,* XXVIII, 178).

(*g*) If a deacon distributes Holy Communion, he shall at the end of the sacred rite bless the people with his hand just as the priest does (Committee, July 13, 1930; *Acta Ap. Sedis,* XXII, 365).

(37) Concerning the Minister of the Sacrament of Penance.

(*a*) May pastors, parochial vicars and other priests delegated for a universality of cases delegate jurisdiction for confession to other priests, or may they at least extend the jurisdiction of priests already approved outside the place and persons for which they have faculty to hear confessions? *Answer:* No, they cannot do so without a special faculty or mandate from the local Ordinary (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 477).

(*b*) The Holy See was asked whether absolution in danger of death according to Canon 882 is limited to the *forum internum,* or whether it also extends to the *forum externum?* The answer was: It is limited to the *forum internum,* and does not extend to the *forum externum* (Committee, December 28, 1927; *Acta Ap. Sedis,* XX, 61).

(*c*) Is the adverb "obiter," occurring in Canon 883, § 2, to be understood in such a sense that the priest (who, in accordance with the first paragraph of the same Canon, has faculty to hear confession during an ocean trip) may, whenever the boat stays in a port, go

ashore and there in a church or chapel hear the confessions of those who present themselves and absolve them validly and licitly, even from cases reserved to the local Ordinary? *Answer:* He may hear confession in the port for three days, and it is immaterial whether one's boat stops on its voyage or whether one has to change boats; he may not hear confessions for longer than three days, if the local Ordinary can be easily reached (Committee, May 20, 1923; *Acta Ap. Sedis,* XVI, 113).

(*d*) It has been declared that major Religious Superiors of exempt organizations are not Ordinaries in the sense of Canon 883, § 1. Consequently, they cannot approve their priests for the hearing of confessions on ocean trips (Committee, July 30, 1934; *Acta Ap. Sedis,* XXVI, 494).

(38) Concerning the Reservation of Sins.

(*a*) Are strangers (*peregrini*), in accordance with Canon 893, bound by the reservations of the place where they stay? *Answer:* They are bound (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 575).

(*b*) The term "quævis reservatio" in Canon 900 has reference only to reserved sins, not to reserved censures, but it includes sins reserved to the Holy See as well as those reserved to the bishop (Committee, November 10, 1925; *Acta Ap. Sedis,* XVII, 583).

(39) Concerning the Place for Hearing Confessions.

Does the precept of Canon 909 (which ordains that there must be between the confessor and the penitent a fixed grating with small perforations) determine the proper manner of hearing confessions of women only, or also of all penitents generally in churches and public oratories? *Answer:* It is the proper manner for all confessions, without prejudice, however, to the permission granted by Canon 910, that the confessions of men may be heard also in private houses (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 576).

(40) Concerning Indulgences.

(*a*) Though the regulations concerning religious articles to be blessed with the Papal Indulgences state that these objects may not be of lead, glass, etc. (cfr. Decree, February 17, 1922), beads made of solid glass or crystal may be blessed with those indulgences (Sacred Penitentiary, December 21, 1925; *Acta Ap. Sedis,* XVIII, 24).

(*b*) When a feast to which an indulgence is attached is legitimately transferred, but only temporarily and without solemnity and external

celebration, the questions arise: (i) whether the indulgence ceases or remains attached to the day, and (ii) if it remains attached to the day, whether it remains thus attached if the feast is transferred because it falls on Good Friday? *Answer:* The indulgence remains attached to the day, even if the feast is transferred on account of falling on Good Friday (Sacred Penitentiary, February 18, 1921; *Acta Ap. Sedis,* XIII, 165).

(*c*) Does the concession of the privileged altar for the dying persevere in view of the law of Canon 930? If so, how is that plenary indulgence to be understood, and must the priest who says Holy Mass for several persons who are dying specify to which he wishes the indulgence to be applied? *Answer:* The Indult perseveres; the indulgence is to be understood as applied to the sick persons before their death and after the manner of an absolution, and the priest need not single out one person, if he says Mass for several dying persons (Holy Office, November 9, 1922; *Archiv für katholisches Kirchenrecht,* CIII, 156).

(*d*) Concerning the chanting of the Litany of the Blessed Virgin and the gaining of the indulgences attached to it, the Holy See was asked whether the practice could be continued of chanting the *Kyrie eleison* once, three invocations with one *Ora pro nobis,* and one *Agnus Dei? Answer:* In view of Canon 934, the faithful cannot gain the indulgences by such a manner of chanting the Litany, and the Holy Father urges the Ordinaries to abolish that manner of chanting the Litany (Sacred Penitentiary, July 21, 1919; *Acta Ap. Sedis,* XII, 18). It was further asked whether the choir may chant three invocations with their respective *Ora pro nobis,* and the people the fourth invocation with the *Ora pro nobis. Answer:* Yes (Sacred Congregation of Rites, October 15, 1920; *Acta Ap. Sedis,* XII, 548). Furthermore, it was asked whether the first invocations to the Blessed Trinity may be chanted in such a manner that the priest sings *Kyrie eleison, Christe eleison,* and the people repeat the same invocations; then the priest continues with *Christe audi nos, Christe exaudi nos,* and the people repeat the same; whether the *Agnus Dei* may be chanted once, and after it *Parce nobis Domine, Exaudi nos Domine, Miserere nobis? Answer:* No, the entire order of the Litany must be observed from the beginning to the end for the purpose of gaining the indulgences (Sacred Congregation of Rites, November 10, 1921; *Acta Ap. Sedis,* XIII, 566).

In the recitation of the Litany the invocations, *Kyrie eleison, Christe eleison, Kyrie eleison,* may be repeated by the people after each invocation pronounced by the priest (Sacred Congregation of Rites, November 6, 1925; *Acta Ap. Sedis,* XVIII, 21). That this may

be done in the *chanting* of the Litany, had been declared previously.

(*e*) In the recitation of the Holy Rosary, may the custom be observed by which after the first part of the Hail Mary the respective mystery is added—e.g., "and blessed is the fruit of thy womb, Jesus, who sweat blood for us"? *Answer:* No (Sacred Penitentiary, July 27, 1920). After this answer of the Sacred Penitentiary several bishops of Germany and Switzerland explained to the Holy See that for many centuries it had been the custom of their people to recite the Holy Rosary thus, and that Pope Pius IX, in the year 1859, had approved of this manner of saying the Rosary. The Sacred Penitentiary answered: Canon 943 contains the general law which in no wise revokes the concession of Pope Pius IX, and the Holy Father should be requested to extend the Indult in favor of all persons in any part of the world who are accustomed to recite the Rosary in that manner. The Holy Father approved of the declaration of the Sacred Penitentiary, and extended the Indult as requested (Sacred Penitentiary, January 22, 1921; *Acta Ap. Sedis*, XIII, 163). The same concession was granted to the Catholics of the Greek-Ruthenian Rite on April 29, 1930 (*Acta Ap. Sedis*, XXII, 292), and to the Catholics of the Greek-Slavonic Rite on January 31, 1931 (*Acta Ap. Sedis*, XXIII, 88).

(*f*) Concerning the prayers to be said for the intentions of the Holy Father for the gaining of plenary indulgences, the Holy See prescribes that for every *toties quoties* plenary indulgence six Our Fathers, Hail Marys and Glory be to the Father, must be said (Sacred Penitentiary, July 5, 1930; *Acta Ap. Sedis*, XXII, 363).

The phrase occurring in grants of indulgences, "to pray for the intentions of the Supreme Pontiff," requires, besides the other good works prescribed, the recitation of one Our Father, Hail Mary and Glory, or some other prayer at one's choice; the phrase, "to visit a church or oratory," means that one must enter the sacred place for the purpose of devotion and prayer, and say some prayers, even mental ones, unless specific prayers are prescribed (Sacred Penitentiary, September 20, 1933; *Acta Ap. Sedis*, XXV, 446).

(*g*) Concerning the Portiuncula Indulgence the Holy See declares that persons who gain it on August 2 in some church may gain it again in another church where the Portiuncula Indulgence is transferred to the following Sunday. The six Our Fathers, etc., must be said and no equivalent prayers will suffice (Sacred Penitentiary, January 13, 1930; *Acta Ap. Sedis*, XXII, 43).

(*h*) Concerning the Stations of the Way of the Cross the Holy See has ruled that the Crown or Beads of the Way of the Cross (by the use of which the indulgences of the Way of the Cross could be gained) is to be abolished, and all faculties to bless those beads are recalled

(Holy Office, July 24, 1912; *Acta Ap. Sedis*, IV, 529). The Holy See has decreed that the indulgences cease also in reference to the beads already blessed before the Decree abolishing them was issued. It further declares that crucifixes blessed with the indulgences of the Way of the Cross may be used for the purpose of gaining the indulgences by those only who at the time are legitimately impeded from visiting a place where the Way of the Cross is erected (Sacred Penitentiary, December 14, 1917; *Acta Ap. Sedis*, X, 30). Finally, the Holy See has declared that all other indulgences granted in past centuries for the Way of the Cross are abolished, and the following only are granted: (a) one plenary indulgence as often as one makes the Way of the Cross in some church or place where it is legitimately erected; (b) another plenary indulgence if on the day when one makes the Way of the Cross one receives Holy Communion, or once a month on the day on which one receives Holy Communion if one has made the Way of the Cross ten times during the month; (c) a partial indulgence of ten years for each station if one has started the Way of the Cross and for some reason does not finish it (Sacred Penitentiary, October 20, 1931; *Acta Ap. Sedis*, XXIII, 522).

Among the many recent Decrees on Indulgences the present one is of unusual importance and eminently practical. From ancient times the erection of the Stations of the Way of the Cross had been made a very formal matter, so much so that various written instruments were required for the validity of the blessing of the Stations. If any one of the papers prescribed for the validity of the blessing had not been properly drawn up, though by mere oversight, the Stations were not validly erected and the people could not gain the Indulgences. To rectify such mistakes, the Holy See was wont to grant a so-called *sanatio* every few years, by which the Stations were made valid for the gaining of the Indulgences. The present Decree abolishes the regulations which required documents for validity of the blessing. The Order of Friars Minor, to which the blessing of the Stations has been reserved, is still authorized to erect the Stations, but the Minister General can no longer delegate priests outside his Order. The Holy See gives special faculties to the bishops who request them to delegate their priests for the blessing of the Stations. By the law of the Code they personally have the faculty to bless the Stations, but they cannot delegate others unless they get a special indult.

The gist of the new Decree is as follows:

For the validity of the erection of the Way of the Cross it is required that the one who blesses the Stations shall have the requisite faculty; all other earlier conditions for validity are revoked. For the sake of ecclesiastical discipline, the local Ordinary's permission to erect the Stations in non-exempt places is to be obtained; this permis-

sion may be presumed if the Ordinary cannot easily be reached. All erections of Stations that were invalid for any reason are hereby declared validated by the Holy See (Sacred Penitentiary, March 12, 1938; *Acta Ap. Sedis*, XXX, 111).

(*i*) A plenary indulgence is granted to all who after Confession and Holy Communion say five decades of the Rosary in a church or chapel where the Blessed Sacrament is reserved (Letters Apostolic, September 4, 1927; *Acta Ap. Sedis*, XX, 376).

(*j*) Clerics in major orders who recite the entire Divine Office, though at various times, in a place where the Blessed Sacrament is reserved, gain a plenary indulgence under the usual conditions (Sacred Penitentiary, October 23, 1930; *Acta Ap. Sedis*, XXII, 493). If one has obtained permission to say other prayers in place of the Divine Office, one can gain the plenary indulgence by reciting those prayers in presence of the Blessed Sacrament (Sacred Penitentiary, November 7, 1932; *Acta Ap. Sedis*, XXIV, 411). A partial indulgence of 500 days is gained for each canonical hour, if the whole Office is not said in presence of the Blessed Sacrament (Sacred Penitentiary, March 18, 1933; *Acta Ap. Sedis*, XXV, 332). Clerics in tonsure or minor orders and novices and students in Religious organizations who recite the Divine Office in presence of the Blessed Sacrament may gain the plenary indulgence (Sacred Penitentiary, March 31, 1937; *Acta Ap. Sedis*, XXIX, 284).

(*k*) Local Ordinaries are not forbidden by Canon 349, § 2, n. 2, to grant indulgences to exempt religious and in their churches (Committee, December 6, 1930; *Acta Ap. Sedis*, XXIII, 25).

It has been declared that the bishops' faculties in Canon 349 "to bless religious articles with the prescribed rites of the Church," allows them to bless those objects with the sign of the cross only, if no special form is prescribed in the liturgical books (Committee, March 12, 1929; *Acta Ap. Sedis*, XXI, 170).

(*l*) From the date of this Decree of the Sacred Penitentiary, March 20, 1933, the faculties which certain Pious Unions and other associations could give to priest members to bless various religious articles with indulgences are revoked. In future they must be obtained from the Sacred Penitentiary with letters of recommendation from the Ordinary. The faculties which Religious Orders and Congregations have in reference to blessing objects with indulgences continue, but the Superiors can delegate those faculties to their own subjects only, not to other priests (*Acta Ap. Sedis*, XXV, 170). Priests who were enrolled prior to the Decree of March 20, 1933, retain the faculties to bless religious objects with indulgences (Sacred Penitentiary, March 2, 1937; *Acta Ap. Sedis*, XXIX, 58).

(*m*) In addition to the indulgences formerly granted for the Forty

Hours' Adoration, the Holy Father Pope Pius XI grants a plenary indulgence each day of the Adoration to all who receive the Sacraments and make a visit during the Exposition, and say six Our Fathers, Hail Marys and Glory. Those who make the visit and say the prayers without receiving the Sacraments get a partial indulgence of fifteen years for each visit (Sacred Penitentiary, July 24, 1933; *Acta Ap. Sedis*, XXV, 381).

(*n*) A plenary indulgence is granted to those who receive the Sacraments, take part in Eucharistic Processions inside or outside a church, and say a prayer for the intentions of the Holy Father (Sacred Penitentiary, September 25, 1933; *Acta Ap. Sedis*, XXV, 478).

(*o*) To gain the indulgences of the Rosary or of the Way of the Cross, the rosary or the crucifix was to be held in one's hands while saying the prayers. The Holy See now grants the indulgences even if one cannot conveniently hold the rosary or the crucifix in one's hands while saying the prayers, provided one carries these blessed objects on one's person (Sacred Penitentiary, November 9, 1933; *Acta Ap. Sedis*, XXV, 502).

(*p*) The rule of Canon 934, § 2, which states that the indulgences attached to certain prayers are lost by additions, omissions, or interpolations, is to be understood of alterations only which change the substance of the prayers (Sacred Penitentiary, November 26, 1934; *Acta Ap. Sedis*, XXVI, 643).

(41) Of the Minister of and Candidates for Sacred Ordination.

(*a*) Concerning the Bull "Exposcit" of Pope Innocent VIII, April 9, 1489, which empowered some Cistercian Abbots to confer deaconship, Dr. Gillmann (Würzburg) requested Cardinal Ehrle to have a thorough search made at the Vatican Archives, and the result was that the above-mentioned Bull was not found. The search, however, established the fact that seven volumes of *Regesta* of the fifth year of the pontificate of Pope Innocent VIII were missing, as well as five volumes of the *Regesta* of the sixth year, and the fifth volume of the "Regesta Supplicum" of the sixth year of his pontificate. Dr. Gillmann remarks that the authenticity of the Bull in question is quite certain, since it was published as early as 1491, at Dijon, in the *Collectanea Cisterciensium Privilegiorum*, and the Cistercian Abbots made use of the privilege as late as the middle of the seventeenth century (*Archiv für katholisches Kirchenrecht*, CIV, 57–59).

Concerning the Bull "Sacræ religionis" of Pope Boniface IX, February 1, 1400, granting faculty to the Abbot of St. Osyth, England, to confer all the Orders including priesthood, Dr. Gillmann states that

he was informed by the Vice-Prefect of the Vatican Archives that the Bull is to be found in the archives. He also proves that the abbots did not have episcopal consecration, but were priests only (*Archiv für katholisches Kirchenrecht,* CV, 474).

There is a divergency of dates concerning the last-mentioned Bull. Dr. Leitner has February 1, 1401, and Dr. Gillmann has February 1, 1400. In the withdrawal of the Bull they differ one year—Dr. Leitner, February 6, 1404, Dr. Gillmann February 6, 1403. It is evidently through a difference of figuring of time in those centuries that authors differ in the reading of the dates of Papal documents.

(*b*) In former times some ecclesiastical colleges or seminaries had obtained the privilege to ordain their students without dimissorial letters of the Ordinaries of these students, so that the consent of the superiors of those colleges or seminaries, or the permission of the Cardinal Protector of the college and the consent of the rector, sufficed for admission of the students to Orders. The Sacred Consistorial Congregation declares that the above privilege must cease, and the common law be observed, because the reasons for which the privilege was granted have ceased to exist. Nevertheless, the rights of the Sacred Congregation of the Propaganda granted to it by Pope Urban VIII by Brief of May 18, 1638, and of other missionary seminaries or colleges dependent on the Sacred Congregation of the Propaganda, remain intact (Sacred Consistorial Congregation, November 6, 1920; *Acta Ap. Sedis,* XIII, 259).

(*c*) The Archbishop of Armagh (Ireland) proposed the following doubts: (i) Who is the proper bishop for ordination of those candidates who have no domicile (cfr. Canon 956)? (ii) Is a man who is ordained by his proper bishop for the service of another diocese incardinated into that other diocese in virtue of Canon 111, § 2, or into the diocese of his proper bishop? (iii) If he is not incardinated into the other diocese by the ordination, how is he to be incardinated? *Answer:* As the first doubt is explained, the bishop of the place where the ordination takes place is the proper bishop, provided the candidate has previously acquired a domicile with the oath spoken of in Canon 956; as to the second doubt, the candidate is incardinated in the other diocese for whose service he is ordained; the third doubt is disposed of by the answer to the second (Committee, August 3, 1919; *Archiv für katholisches Kirchenrecht,* CIII, 169).

(*d*) Canon 976 rules that the priesthood shall not be conferred until after the first semester of the fourth year of theology. In some religious communities it has been customary to ordain the men after three years of theology, their studies being completed in the year after their ordination to the priesthood. Now, if a dispensation is granted

by the Holy See to ordain the men after three years of theology, it is granted under condition only that the newly ordained priests complete the fourth year of theology, and that they are not employed in the care of souls, in preaching and the hearing of confessions, or in any work outside the religious community which would interfere with their studies. The superiors have a grave obligation of conscience to see that these conditions are complied with, and they apply to all dispensations—no matter in what forms they were issued—granted after the promulgation of the Code (Sacred Congregation of Religious, October 27, 1923; *Acta Ap. Sedis,* XV, 549).

(*e*) With reference to irregularities and other impediments of ordination, the following decisions have been made:

A bishop asked for a dispensation from the irregularity of bodily defect of a young cleric who during the World War had lost his entire right hand. The Sacred Congregation of the Sacraments first submitted the case to the Holy Office, and then answered the bishop that the cleric should get an artificial hand, a doctor should testify as to what the cleric is able to do with the artificial hand, and the master of ceremonies should subject him to tests in the exercise of the ceremonies, and report the results. After this, the case should again be submitted to the Sacred Congregation of the Sacraments (July 1, 1918; *Acta Ap. Sedis,* XIII, 436).

(*f*) In accordance with Canon 987, is a man whose father or mother is a non-Catholic, and whose other parent is Catholic, to be numbered among those impeded from the reception of orders, and does the impediment exist even though the mixed marriage was properly contracted, the promises having been made and the dispensation granted? *Answer:* Yes, the impediment exists (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 478).

(*g*) Does the term "filii" in Canon 987, n. 1, imply only the descendants in the first degree? *Answer:* Yes (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 528).

(*h*) Is Canon 987, n. 5, to be understood in such a manner that the impediment of ordination exists if a man might be called to military service, but has not yet been called either because he is too young, or because after the physical examination he was declared temporarily disqualified for service? *Answer:* Yes, the impediment exists, and the men may not receive the tonsure or any orders before they have been definitely discharged as disqualified (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 344).

(*i*) The Holy See has issued an Instruction requiring the observance of a number of points by candidates for the secular priesthood, notably the oath that they receive Major Orders of their own free will (Sacred

Congregation of the Sacraments, December 27, 1931; *Acta Ap. Sedis,* XXIII, 120). A similar Instruction was issued for the candidates to the priesthood in religious organizations (Sacred Congregation of Religious, December 1, 1931; *Acta Ap. Sedis,* XXIV, 74).

(*j*) Concerning the retreat of six full days before Major Orders, the Holy See declares that, if several major orders are received by a candidate within a few days, the first major order must be preceded by a retreat of six full days, the others by at least one day's retreat (Sacred Congregation of the Sacraments, May 2, 1928; *Acta Ap. Sedis,* XX, 359).

(*k*) A strange bishop may not give first tonsure to a candidate because he wants to join his diocese. The candidate must either acquire a domicile in the new bishop's diocese or otherwise be ordained with the dimissorials of the proper bishop, that is, the bishop of his domicile (Committee, February 17, 1930; *Acta Ap. Sedis,* XXII, 195).

(*l*) To the question whether the man who is ordained by his proper bishop for service in another diocese is incardinated in the diocese of his proper bishop or in the diocese of the strange bishop, the Committee for the Authentic Interpretation of the Code answered that he is incardinated into the diocese for whose service he is ordained (August 17, 1919; *Monitore Ecclesiastico,* 1920, p. 57).

(*m*) A lengthy Instruction of the Sacred Congregation of the Sacraments, December 27, 1930 (*Acta Ap. Sedis,* XXIII, 1931, 120), demands various investigations concerning the candidates for the secular priesthood, both before the first tonsure and for the various orders, and finally demands that before each major order the candidates make the following declaration and oath before the Ordinary, which is to be written by his own hand, and which we here reprint for convenience' sake:

"Ego subsignatus N. N., cum petitionem Episcopo exhibuerim pro recipiendo subdiaconatus (seu diaconatus vel presbyteratus) Ordine, sacra instante Ordinatione, ac diligenter re perpensa coram Deo, iuramento interposito, testificor in primis, nulla me coactione seu vi, nec ullo impelli timore in recipiendo eodem sacro Ordine, sed ipsum sponte exoptare, ac plena liberaque voluntate eumdem velle, cum experiar ac sentiam a Deo me esse revera vocatum.

Fateor mihi plene esse cognita cuncta onera cæteraque ex eodem sacro Ordine dimanantia, quæ sponte suscipere volo ac propono, eaque toto meæ vitæ curriculo, Deo opitulante, diligentissime servare constituo.

Præcipue quæ cœlibatus lex importet clare me percipere ostendo, eamque liberter explere atque integre servare usque ad extremum, Deo adiutore, firmiter statuo.

Denique sincera fide spondeo iugiter me fore, ad normam ss.

Canonum, obtemperaturum obsequentissime iis omnibus, quæ mei præcipient Præpositi, et Ecclesiæ disciplina exiget, paratum virtutum exempla præbere sive opere sive sermone, adeo ut de tanti officii susceptione remunerari a Deo merear.

Sic spondeo, sic voveo, sic iuro, sic me Deus adiuvet et hæc Sancta Dei Evangelia, quæ manibus meis tango." Here follows place and date, and signature of the one taking the oath (cfr. *The Homiletic and Pastoral Review,* June, 1931).

(*n*) A Decree of the Holy See of June 9, 1931, published the process to be followed in the canonical trials regarding Sacred Orders when the one ordained claims that his ordination was invalid, or, while valid, asserts that he was ordained through force and fear and therefore should be entitled to a declaration by the court that he is free from all the obligations of Major Orders (Sacred Congregation of the Sacraments, June 9, 1931; *Acta Ap. Sedis,* XXIII, 457–492).

(*o*) The words "festo de præcepto" in Canon 1006, § 3, do not include as ordination days feasts which have by the Code been suppressed in the Universal Church (Committee, May 15, 1936; *Acta Ap. Sedis,* XXVIII, 210).

(42) Concerning Bethrothal.

When a party claims his right from valid espousals against a party who is about to marry another, the action concerning a just cause for the dissolution of the betrothal is no longer admitted; the action for reparation of damages does not suspend the celebration of marriage. Furthermore, the Holy See decided that the action for the reparation of damages spoken of in Canon 1017 is one of mixed forum (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 345).

(43) Concerning the Knowledge of Christian Doctrine Before Marriage; Publication of the Banns; Free State.

(*a*) Should the pastor refuse to marry, or delay the marriage, if either the bride or groom is found ignorant of Christian doctrine? *Answer:* The pastor shall observe the precept of Canon 1020, and, in doing what the Code demands, he shall teach the ignorant couple at least the elementary principles of Christian doctrine; if they refuse the instruction, he may not, in accordance with Canon 1066, refuse to assist at their marriage (Committee, June 2–3, 1918; *Acta Ap. Sedis.* X, 345).

(*b*) If a party after attaining the age of puberty has lived for more than six months in distant and not easily accessible places, so

that a longer time is required to get the regular attestation on the free state of the party and the celebration of marriage is urgent, the question arises whether the oath of the party and two witnesses—or, if two cannot be had, of one person—who lived with him in those places is sufficient certification of his free state. *Answer:* The matter is committed to the prudent judgment of the Ordinary, who may, in accordance with Canon 1023, § 2, prescribe other proofs, including the supplementary oath (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 345).

(*c*) May the Ordinary by a general order prescribe that the pastors demand of all persons to be married, spoken of in the second sentence of Canon 1023, the oath on their free state without the necessity in each individual case of having recourse to the Ordinary? *Answer:* The precept of the Code is to be observed (Sacred Congregation of the Sacraments, February 6, 1920; *Archiv für katholisches Kirchenrecht,* C, 28).

(*d*) With reference to the investigation about the free state of the parties, the Sacred Congregation of the Sacraments states that many local Ordinaries have complained that the pastors, especially in distant countries to which workingmen emigrate from Europe, have not observed the rules of Canon Law concerning the investigation whether the parties are free to marry, and have neglected to send notice of the marriages contracted to the parishes in Europe where those people were baptized. Owing to this carelessness, people have been able to deceive the pastors, and get married again while their first spouse is still living in Europe. The Sacred Congregation of the Sacraments had issued an Instruction on this matter to the Ordinaries, March 6, 1911 (*Acta Ap. Sedis,* III, 102), but lest anyone argue that the Code has revoked the said Instruction, the Instruction together with the references to the Code is again issued to the Ordinaries.

(i) The Ordinaries must remind the pastors that it is not lawful to assist at a marriage—not even under the pretext or with the intention of keeping the people from living in concubinage or from contracting a so-called civil marriage—unless they have legally established the fact that the parties are free to marry, observing in that investigation the precepts of Canons 1020 and 1097, 1–3; and the pastors are to be admonished not to neglect the precept of Canon 1021 concerning the sending of notice of the marriage contracted to the parish where the parties were baptized.

(ii) The pastor who assists at the marriage (cfr. Canon 1103, § 2) must send the notice to the parish of baptism without delay, and that notice must contain the full names of the parties and their parents, the age of the parties, the place and date of marriage, the full names

of the witnesses, the full name of the pastor, and the seal of the parish. The parish, diocese and place where the parties were baptized must be accurately indicated in the notice. It should be sent by registered mail.

(iii) The pastor should send the letters of inquiry concerning the free state of the parties and the notice of the marriage to the place of baptism through the chancery office of his own Ordinary.

(iv) The marriage of workingmen who have come recently from distant counties may not, as a rule, take place without consulting the local Ordinary, for they are either *vagi* (i.e., without domicile or quasi-domicile) or, if they are not *vagi,* are not sufficiently known, so that in many cases there is not sufficient certainty of the absence of impediments to their marriage. In both cases the Code demands that the matter be referred to the Ordinary (cfr. Canons 1032, 1031, § 1, 1023). The Sacred Congregation strictly forbids the pastors to assist at these marriages without consulting the local Ordinary, except in a case of necessity or rather in danger of death.

(v) If, in spite of all precaution, the pastor of the place of baptism finds that a party married again while the first spouse was still living, he shall at once inform the pastor who married them through the chancery office of the Ordinary.

(vi) The Ordinaries must zealously see that these precepts are faithfully observed, and proceed even with canonical penalties, if necessary, against the violators (Sacred Congregation of the Sacraments, July 4, 1921; *Acta Ap. Sedis,* XIII, 348).

(43a) Special Regulations for Russia Concerning Notifications of Marriage, etc.

As in the present state of affairs in Russia ecclesiastical documents may easily be lost to the great disadvantage of those concerned, the Pontifical Committee for Russia ordains that the notifications prescribed by Canons 470, § 2, 576, § 2, 798, 1101, and 1103, § 2, to be made to the pastor of the place of baptism, shall be made to this Pontifical Committee, if the parish is located within the domain of Russia (Sacred Congregation for the Oriental Church, July 13, 1928; *Acta Ap. Sedis,* XX, 260).

(44) Concerning Impediments of Marriage.

(*a*) In the cases spoken of in Canons 1044–1045, is one obliged to make use of telephone or telegraph to communicate with the local Ordinary, if time does not permit one to go or write to the Ordinary?

Answer: If telephone or telegraph are the only means by which the Ordinary can be approached, one is not obliged to use these means, and can make use of the faculties granted in the said Canons (Committee, November 12, 1922; *Acta Ap. Sedis,* XIV, 662).

(*b*) Is the clause of Canon 1045—"whenever the impediment is detected when all things are ready for the marriage"—to be understood in such a sense that the impediment must have been entirely unknown previously, and becomes known only at that moment; or is it to be understood in the sense that, though it was known before, it came to the knowledge of the pastor or the Ordinary only at that time? *Answer:* It means that knowledge came to the pastor or the Ordinary at the time when everything was ready for the marriage (Committee, March 1, 1921; *Acta Ap. Sedis,* XIII, 178).

(*c*) May a widow be admitted to marriage before the Church, without marriage before the State, if by the civil marriage the widow would lose the military pension? *Answer:* The practice of the Sacred Congregation is not to be departed from; wherefore, the loss of the pension is not a sufficient reason to permit the marriage before the Church without the civil ceremony (obligatory in Italy). If other circumstances are present, recourse is to be had in each case to the Holy See (Sacred Congregation of the Sacraments, July 2, 1917; *Archiv für katholisches Kirchenrecht,* CIII, 158).

(*d*) Proof of death of spouse by presumption was admitted by the Holy See in a case in which the husband had, with the consent of his wife, gone from Spain to South America in 1902 or 1903. For nearly two years after arriving in the new country, he repeatedly sent letters to his wife and relations. Suddenly, about December, 1905, all communications ceased, and nothing further was heard of him. As the wife desired to marry again, she asked the Holy See for the declaration of the death of her first husband. The Holy See allowed her to marry again for the following reasons: (1) the long time of absence during which no news had come from the husband to the wife or relations; (2) the good character of the man supposed to be dead; (3) his love for the wife and his daughter; (4) careful investigations instituted concerning him; (5) the rumor of death (Sacred Congregation of the Sacraments, November 18, 1920; *Acta Ap. Sedis,* XIV, 96).

(*e*) What is to be done if illicit and secret intercourse preceded the birth of the woman whom a man wants to marry, so that there may be doubt as to whether she is his daughter or his sister? *Answer:* Canon 1076, § 3, gives the answer, namely, that marriage may not be allowed in the case (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 346).

(*f*) By declaration of the Holy See, the impediment of public propriety does not arise from the mere fact of civil marriage independently of cohabitation (March 12, 1929; *Acta Ap. Sedis,* XXI, 170).

(45) Concerning Dispensations from Impediments of Marriage.

The question was submitted to the Holy See whether the words of Canon 1045, § 3, "pro casibus occultis," are to be understood only of those impediments of marriage which are of their nature and actually occult, or also of those of their nature public but actually occult? *Answer:* They are to be understood also of those impediments public of their nature but actually occult (Committee, December 28, 1927; *Acta Ap. Sedis,* XX, 61).

The Holy See has issued an Instruction to local Ordinaries to eliminate so far as possible marriage dispensations between very near blood relations, especially in the first degree touching the second in the collateral line. They should have the pastors instruct the people regarding the purpose of the Church in forbidding such marriages. In the petition to the Holy See for the dispensation, which may be asked only for grave canonical reasons, the bishop should specially recommend the petition and endorse it with his own personal signature (Sacred Congregation of the Sacraments, August 1, 1931; *Acta Ap. Sedis,* XXIII, 413).

A Decree of the Holy See ordains that dispensations from the marriage impediment of mixed religion or disparity of cult should not be granted unless the promises are made in such a manner that nobody can frustrate their fulfillment, not even by recourse to the civil laws to which either party is subject and which are in force in their actual place of residence or in the place where they intend to settle; otherwise the dispensation is null and void (Holy Office, January 14, 1932; *Acta Ap. Sedis,* XXIV, 25).

To make an impediment of marriage public in the sense of Canon 1037, it suffices that the fact from which the impediment arises be public (Committee, June 25, 1932; *Acta Ap. Sedis,* XXIV, 284).

(46) Concerning Matrimonial Consent.

(*a*) With reference to insanity and other mental ailments the Roman Rota (*in Causa Buscoducensi*) states that, inasmuch as the consent is essential to marriage, not only insane persons are to be excluded from marriage, but also all those whose mind at the time of the contract is obscured to such an extent that they cannot understand the rights and duties of marriage. The facts of the individual case

have to be considered, for it may happen that a person is not completely insane, so that his faculty of reasoning is not entirely destroyed. Again, it may happen that a person is of a quiet disposition, so that he does not easily betray his insanity, and, as he gradually grows weaker and weaker in his mind, it is difficult to determine whether at the time of marriage he had sufficient knowledge (January 7, 1918; *Acta Ap. Sedis,* X, 517). In another case, the Roman Rota pronounced a marriage invalid for reason of insanity, because the man was a monomaniac, and the partial insanity was considered sufficient to deprive the man of the faculty to give genuine marriage consent, because his insanity was in reference to marriage [Roman Rota (*in Causa Quebecensi*), December 23, 1918; *Acta Ap. Sedis,* XII, 338].

(*b*) With reference to force and fear which prevent free consent, the Roman Rota declared invalid a marriage of a young woman of nineteen years of age who was of a mild and timid character, and who was forced to contract marriage with a young man against her will by command and serious threats of her father (*in Causa Parisiensi,* April 4, 1919; *Acta Ap. Sedis,* XII, 373).

(*c*) With reference to marriage consent under condition, a special Committee of Cardinals appointed by the Supreme Pontiff gave the following rules by which one may determine whether the consent is truly conditional: (1) if a woman has subordinated her consent to a condition properly so-called—for example, that she will marry the man only if he had not lived with a woman before; (2) if that condition was not revoked before the marriage was contracted, or had not ceased in any other manner; (3) if the man in his former life had actually lived with a woman, marriage is invalid because of the condition attached to the consent and the non-verification of the condition. As to the perseverance of the condition up to the moment of the marriage contract, the Committee declares that the revocation is a fact, and facts are not presumed but must be proved. The fact that the man had lied to her, saying that he had never lived with a woman, does not destroy the condition, but her consent remains subject to that condition, even though at the time of marriage she believes the man asserting that he was not guilty [*in Causa Versaliensi,* August 2, 1918; *Acta Ap. Sedis,* X, 388. Cfr. Roman Rota (*in Causa Parisiensi*), August 11, 1921; *Acta Ap. Sedis,* XIV, 512].

(47) Concerning the Form of Marriage.

(*a*) With reference to the substitutes of a pastor and their right to witness marriage contracts, the following questions were decided: (i) whether the *vicarius substitutus* spoken of in Canon 465, § 4, can validly and licitly assist at marriage after the approval of the Ordi-

nary, if no limitation is attached to his appointment? *Answer:* Yes. (ii) Whether the same vicar can do so even before approval by the Ordinary? *Answer:* No. (iii) Whether the same vicar who substitutes for a religious pastor can do so after the approval by the Ordinary, even before the religious superior has approved of his appointment? *Answer:* Yes. (iv) Whether the vicar or priest spoken of in Canon 465, § 5, can do so before the approval of the Ordinary? *Answer:* Yes, unless the Ordinary to whom the designation of the priest who is to take the pastor's place was made known decrees otherwise, but until that time he has the right to witness marriages (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 527).

(*b*) More doubts were submitted to the Holy See concerning the right of the administrator of a parish and substitutes of a pastor to delegate other priests to witness marriages: (i) Can the administrator of a vacant parish legitimately appointed (cfr. Canons 472–473) give permission to a specified priest to assist at a specified marriage? *Answer:* Yes. (ii) Can the *vicarius substitutus* spoken of in Canon 465, § 4, delegate another priest after the approval by the Ordinary, if he attached no limitations to his appointment? *Answer:* Yes. (iii) Can the substitute of a religious pastor delegate after approval by the Ordinary and before approval by the religious superior? *Answer:* Yes. (iv) Can the vicar or priest substituting for the pastor, as described in Canon 465, § 5, delegate before approval of his appointment by the Ordinary? *Answer:* Yes, until the Ordinary to whom the designation of the priest was made known rules otherwise. (v) Can the *vicarius adjutor* appointed to a pastor who is unable to attend to the duties of his office, as described in Canon 475, § 1, delegate? *Answer:* Canon 475, § 2, gives the answer. (vi) Can the assistant priest (*vicarius cooperator*) spoken of in Canon 476 delegate without the knowledge of the pastor? *Answer:* Canon 476, § 6, gives the answer (Committee, May 20, 1923; *Acta Ap. Sedis,* XVI, 114).

Can the assistant priest who in accordance with Canon 1096, § 1, has received from the pastor or the local Ordinary a general delegation to witness marriages, subdelegate another specified priest to assist at a specified marriage? Furthermore, can the pastor or the local Ordinary who according to Canon 1096, § 1, delegates a certain specified priest to witness a specified marriage, give him also permission to subdelegate another specified priest for assisting at that same marriage? *Answer:* Yes, in both cases (Committee, December 28, 1927; *Acta Ap. Sedis,* XX, 61).

(*c*) In accordance with Canon 1096, § 1, is the priest sufficiently specified if the pastor declares to the superior of a monastery that he (the pastor) delegates for assistance at a marriage to be contracted in

the chapel dependent on his parish on the following Sunday some religious priest whom the superior shall in the course of the following days appoint to say Mass in that chapel on Sunday? *Answer:* No, that delegation is not sufficiently specific (Committee, May 20, 1923; *Acta Ap. Sedis*, XVI, 115).

(*d*) In order to contract marriage before two witnesses (without the presence of an authorized priest) moral certainty is required that for one month the pastor shall not be able to be present, and that the parties cannot go to him without great inconvenience; the moral certainty must be established either from notoriety of the fact or by inquiry (Committee, November 10, 1925; *Acta Ap. Sedis*, XVII, 583). Moral absence of the pastor or authorized priest (e.g., prohibition of the civil law to witness the marriage of certain parties who under the ecclesiastical law are free to marry) does not suffice, physical absence only is meant in Canon 1098 (Committee, March 10, 1928; *Acta Ap. Sedis*, XX, 120). A further Declaration of the Committee of July 25, 1931 (*Acta Ap. Sedis*, XXIII, 388), practically annuls the declaration of March 10, 1928, in so far as it includes under physical absence also those cases in which the pastor, though materially present in the place, cannot ask for and receive the consent *ob grave incommodum*. It is merely a question whether one should call it physical or moral absence (cfr. *Linzer Quartalschrift*, 1931, p. 381; *Apollinaris*, 1931, p. 381).

(*e*) Canon 1102, § 1, revokes the faculty for passive assistance which may have been granted by the Holy See to some countries (Committee, March 10, 1928; *Acta Ap. Sedis*, XX, 120).

(*f*) Children of mixed or disparate marriages contracted with proper dispensation are considered born of non-Catholics and therefore are not bound to the Catholic form of marriage, if, though baptized in the Catholic Church, they were raised from infancy in some sect or without religion (Committee, July 20, 1929; *Acta Ap. Sedis*, XXI, 573). The same was declared concerning children born of apostate Catholics (Committee, February 17, 1930; *Acta Ap. Sedis*, XXII, 195).

Persons who are or have been members of atheistic sects are as to all effects of law, including ordination and marriage, to be considered the same as those who are or have been members of non-Catholic sects (Committee, July 30, 1934; *Acta Ap. Sedis*, XXVI, 494).

(*g*) Mere civil marriage (independent of public cohabitation, which is public concubinage) does not bring about the impediment of public propriety that arises from an invalid marriage (Committee, March 12, 1929; *Acta Ap. Sedis*, XXI, 170).

(*h*) Concerning Catholics of Oriental Rites and the form of marriage prescribed by the Code, Greek-Ruthenians and persons of mixed

rites are bound to observe the *Ne Temere* form of marriage, that is, they must be married by the pastor of the bride, and dispensations must be given by the Ordinary of the bride (Sacred Congregation for the Oriental Church, March 1, 1929; *Acta Ap. Sedis,* XXI, 152). Maronites are not bound by the form of marriage of the *Ne Temere* Decree or the Code (Sacred Congregation of the Oriental Church, December 19, 1928; cfr. *Ecclesiastical Review,* 1929, p. 384). There is no decision on marriages of Maronites with Catholics of the Latin Rite, but Canon 1099, § 1, n. 3, binds them to the form of the Code.

(*i*) Legitimation of offspring born while the natural parents were under the impediment of either age or disparity of cult, is not effected by subsequent marriage though the impediment has ceased at the time of the marriage (Committee, December 6, 1930; *Acta Ap. Sedis,* XXIII, 25).

(*j*) The Holy See has declared that the dispensation granted to Catholics to marry non-Catholics shall not be valid unless the promises are made in such a form and manner that no one can prevent their being put into effect even by appealing to the civil law in force in the place where they actually live or where they may live afterwards (Holy Office, January 14, 1932; *Acta Ap. Sedis,* XXIV, 25).

(48) Concerning the Time and Place of Marriage.

Canon 1108 grants faculty to the local Ordinaries to permit the nuptial blessing for a just reason even during Advent and Lent, provided the laws of the Sacred Liturgy are observed. The following questions were submitted to the Holy See:

(*a*) If the Ordinary allows the nuptial blessing on Christmas Day or Easter Sunday, is it permissible to add to the Oration of the Mass of the feast the commemoration *pro sponsis,* though these feasts (like the feasts of Epiphany, Pentecost, Trinity Sunday, Corpus Christi) exclude every other oration? *Answer:* Yes, the commemoration is to be added to the Oration of the Day under one conclusion.

(*b*) Is it permissible to say the Votive Mass *pro sponsis* during the closed seasons? *Answer:* If the local Ordinary permits the solemn nuptial blessing during these seasons, the Votive Mass *pro sponsis* may be said with the exception of Sundays, feasts of precept of the first and second class (actual and suppressed feasts of precept), privileged octaves of the first and second rank, privileged ferias and the vigil of Christmas.

(*c*) On privileged vigils occurring outside the closed season (namely, those of Pentecost and the Epiphany), is it permissible to say the Votive Mass *pro sponsis? Answer:* It is not permitted on

either vigil [Sacred Congregation of Rites (*in Causa Herbipolensi*), June 14, 1918; *Acta Ap. Sedis,* X, 332].

(*d*) In mixed marriages not only the Votive Mass *pro sponsis* is forbidden, but also any other Mass if that Mass can from the circumstances be considered as a completion of the marriage ceremony (Committee, November 10, 1925; *Acta Ap. Sedis,* XVII, 583). The Holy See has declared that by Canon 1102, § 1, the faculty granted by the Holy See for some place (country or diocese) to assist passively at illicit mixed marriages has been revoked (Committee, March 10, 1918; *Acta Ap. Sedis,* X, 120).

(49) Concerning Sacramentals.

(*a*) With reference to the administration of sacramentals, is Canon 1149 to be understood of their public application to the faithful, and may catechumens be admitted to the imposition of ashes and the distribution of blessed candles and palms? *Answer:* Yes (Sacred Congregation of Rites, March 8, 1919; *Acta Ap. Sedis,* XI, 144).

(*b*) May the custom of distributing on the First Sunday in Lent the ashes blessed on Ash Wednesday be allowed by the bishop to continue, because few people go to church on Ash Wednesday? *Answer:* It is permissible in the case, provided the ashes were blessed and imposed on those present on Ash Wednesday. On the First Sunday in Lent the ashes may be imposed at the end of the Mass or at any other time apart from the Mass (Sacred Congregation of Rites, June 30, 1922; *Acta Ap. Sedis,* XIV, 471). The Holy See was further requested to declare whether the said permission applies also to the oratories of pious unions or congregations, to rural chapels, and other places where services for workmen are conducted, so that all may more easily have opportunity to receive the ashes? *Answer:* Yes, the matter is committed to the prudent judgment of the Ordinary in each case, but the Decree of June 30, 1922, concerning the blessing and distribution of the ashes on Ash Wednesday must be observed (Sacred Congregation of Rites, February 1, 1924; *Acta Ap. Sedis,* XVI, 102).

(*c*) A priest who celebrates a Low Mass on Ash Wednesday in a semi-public oratory may before the Mass bless the ashes (according to the rite of the *Memoriale Rituum* of Pope Benedict XIII) and distribute them to those present (Sacred Congregation of Rites, November 6, 1925; *Acta Ap. Sedis,* XVIII, 21).

(*d*) By Decree of the Sacred Congregation of Rites, March 20, 1869, it had been permitted to a certain diocese to use the candles blessed on the Feast of the Purification for the blessing of St. Blase, and employ the shorter formula "Per intercessionem B. Blasii liberet

te Deus a malo gutturis. Amen." Now, the Roman Ritual has a special form of blessing for the candles and a longer form for the blessing of the throat. May the concession to that diocese be made use of by other dioceses? *Answer:* The oration and formula of the Roman Ritual is to be employed everywhere (Sacred Congregation of Rites, February 1, 1924; *Acta Ap. Sedis,* XVI, 102).

(50) Concerning Churches.

(*a*) At the request of several local Ordinaries that the Holy See should issue some rule or instruction concerning the admission of flags into church or their benediction, the Sacred Congregation of Rites declared that, when the insignia or flags do not belong to societies openly hostile to the Catholic religion, or to a society whose statutes are in themselves objectionable or whose insignia or flags bear emblems forbidden and condemned by their very nature, they may be admitted into church. Whenever, out of respect and deference for the Catholic Faith, members peacefully request that the insignia or flags be blessed, the blessing may be done according to the formula in the Roman Ritual (Sacred Congregation of Rites, March 26, 1924; *Acta Ap. Sedis,* XVI, 171).

(*b*) In churches and in their crypts which are appointed for divine services, is it permissible to place tablets with inscriptions and the names of the faithful departed, whose bodies are not, and cannot in accordance with Canon 1205, § 2, be buried there? *Answer:* It is not allowed in accordance with former answers and the Decree of the Sacred Congregation of Rites, n. 733, and Canon 1205, § 1 (Sacred Congregation of Rites, October 20, 1922; *Acta Ap. Sedis,* XIV, 556).

(*c*) The fast before the consecration of a church (cfr. Canon 1166, § 2) follows the rules of the common law on fasting, that is, it does not include abstinence (Committee, July 20, 1929; *Acta Ap. Sedis,* XXI, 573.)

(*d*) Church bells are not to be rung for secular purposes without the permission of the Ordinary (Sacred Congregation of the Council, March 20, 1931; *Acta Ap. Sedis,* XXIII, 129).

(51) Concerning Altars.

The Sacred Congregation of Rites has published a shorter formula for the reconsecration of immovable altars which have lost their consecration (September 9, 1920; *Acta Ap. Sedis,* XII, 449).

(52) Concerning Cemeteries.

(*a*) Is the burial of the faithful in a subterranean church to be considered as burial in church in the sense of Canon 1205, § 2? *Answer:* Yes, in the case of a subterranean church which is truly and properly a church destined for divine worship (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 478).

(*b*) Is there any objection to the practice of keeping electric or other lamps burning over the tombs of the faithful in Catholic cemeteries? *Answer:* There is no objection, but the light as well as the flowers placed at the graves should be put there, not only as a mark of respect for the dead and a solace for the living, but as an expression of the faith that teaches the resurrection of the bodies of the dead. Moreover, the material marks of respect may not be carried to such an extent as to injure spiritual suffrages for the dead—namely, the offering of Holy Mass, of prayers and alms (Sacred Congregation of Rites, October 30, 1922; *Acta Ap. Sedis,* XIV, 598).

(*c*) Not only is it forbidden to bury the bodies of the faithful in a church but also to transfer their bones at a later date from the place of burial to a church (Sacred Congregation of the Council, December 13, 1927; *Acta Ap. Sedis,* XX, 261).

(53) Concerning Funerals.

(*a*) In accordance with Canon 1215, the bodies of the faithful are to be taken from the place where they die to the church where the funeral services are to be conducted, unless a grave reason stands in the way. The question arises whether the danger of offending the people and the clergy by the removal of the body is to be considered a grave reason in the sense of Canon 1215? *Answer:* No; contrary custom is to be stopped by the Ordinary (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 479).

(*b*) The Archbishop of Rio de Janeiro, in Brazil, explains that in his archdiocese the burial rites as prescribed in the Roman Ritual are not observed, inasmuch as the bodies of the faithful are not taken to church because the civil laws demand that the bodies be buried within twenty-four hours after death, and also because the cemeteries are by the law of the country at a great distance from the parish. The pastor is called to the house, where the prayers over the body are said. The question, therefore, arises what rubrics and rules are to be observed? *Answer:* (i) The Roman Ritual and Canon 1215 are to be followed as far as possible; (ii) the family of the deceased should be informed that the funeral with a burial Mass can be had though the body is

present morally only, not physically, in accordance with the rubrics and decrees; (iii) in extraordinary cases the Sacred Congregation of Rites will issue instructions (February 28, 1920; *Acta Ap. Sedis,* XII, 128).

(*c*) The Cathedral Chapter of a certain diocese claimed the right to bury any of the faithful of the four parishes of the episcopal city at the petition of the heirs or the parents, and also claimed freedom from the obligation of paying to the proper pastor the canonical portion of the funeral offerings. The pastors had recourse to the Holy See and obtained the following answer: (i) In accordance with Canon 1226, § 1, one may either in person or through another to whom one gives a legitimate mandate choose a cemetery for one's burial, but the petition of the parents or the heirs alone does not suffice; (ii) without prejudice to particular law, whenever a member of the faithful is not buried from his own parish church, the proper pastor of the deceased is entitled to the canonical portion of the funeral offerings with the exception of the case in which the body cannot be brought to the church of his own parish, as is stated in Canon 1236, § 1. The pastors have by law the right to the funeral of their own parishioners, and, whenever the deceased has made use of the right to select a church of his own choice for the funeral, the proper pastor has the right to the canonical portion of the funeral offerings. If another church claims contrary custom or legitimate prescription, or special privilege against the rights of the proper pastor, these must be proved (Sacred Congregation of the Council, July 9, 1921; *Acta Ap. Sedis,* XIII, 534).

(*d*) Canon 1237, § 2, prescribes that, when the first solemn funeral services are not held at the time of burial but within one month from burial, the canonical portion of the funeral offerings must be paid to the proper pastor also from the solemn services held within a month. The Holy See was requested to declare whether the canonical portion is due to the proper pastor from the funeral services which are held, not within a month from the burial, but within a month from the notice of death, when the deceased died in a distant country? *Answer:* Recourse is to be had to the Sacred Congregation of the Council.

Furthermore, the Holy See was asked whether the Ordinary, for the purpose of preventing the abuse of delaying the funeral services over one month with the intention of depriving the proper pastor of the canonical portion, may pass a law that the public services *cum cantu* for the deceased requested by the parents are to be considered true funeral services from which the canonical portion must be paid to the proper pastor? *Answer:* Recourse is to be had to the Sacred Congregation of the Council (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 576). According to declaration of the Holy See, also

religious organizations are bound to observe the diocesan law on funeral taxes spoken of in Canon 1234 (Committee, March 6, 1927; *Acta Ap. Sedis,* XIX, 161).

(*e*) Does the Requiem Mass, which is celebrated on the transfer of the body which had already been buried to its final resting place, enjoy the privileges of the Funeral Mass *in die obitus seu depositionis,* though funeral services had been held at the first burial of the deceased? *Answer:* No, but the Sacred Congregation extends to the proposed case the privileges contained in the new rubrics of the Missal, title III, *De Missis defunctorum,* n. 6 (Sacred Congregation of Rites, June 16, 1922; *Acta Ap. Sedis,* XIV, 393).

(*f*) A soldier had died in the military hospital, and the funeral services were held in that place. After the war the body was brought to the home town of the deceased, and the widow of the soldier who was then living in the cathedral parish of the town wanted the funeral services to be conducted at the cathedral. The pastor of the parish where the soldier had lived when he was called to service in the war objected, claiming that the services should take place at his church. The Sacred Congregation answered that the services could be conducted at the cathedral. The vote of the consultors explains that the funeral services proper take place once only. In the present case, these services had been held at the first burial. In the transfer of the body and the services held on that occasion, Canons 1215–1218 do not apply [Sacred Congregation of the Council (*in Causa S. Severi*), January 12, 1924; *Acta Ap. Sedis,* XVI, 188].

(*g*) The custom of covering the casket of a deceased Sister with a white cloth or other decoration in white may not be continued, because the rubrics and decrees of the Sacred Congregation of Rites forbid the white color in case of funerals of adults (Sacred Congregation of Rites, November 6, 1925; *Acta Ap. Sedis,* XVIII, 21).

(*h*) On days on which the rubrics forbid funeral Mass in presence of the body the sounding of funeral bells at burial is forbidden the whole day, from first vespers of the preceding and the whole day of the feast. On days on which High Mass "absente cadavere" is forbidden, the sounding of funeral bells at burial is forbidden (Sacred Congregation of Rites, October 21, 1927; *Acta Ap. Sedis,* XIX, 382).

(*i*) Ecclesiastical burial is to be denied to a person who gave orders to have his body cremated, and has persevered in that disposition until death. The prohibition must be enforced, even though cremation does not take place because of obedience to the law of the Church (cfr. Canon 1203, § 2) forbidding one to execute the order for cremation (Committee, November 10, 1925; *Acta Ap. Sedis,* XVII, 583).

(*j*) The Sacred Congregation of the Holy Office instructs all local

Ordinaries that they should endeavor to stop cremation of human bodies which is advocated even by some Catholics as a scientific protection against diseases. The truth is that atheists and materialists further cremation to divert the human mind from the thought of death and resurrection and to propagate materialism.

If cremation is resorted to, not by will of the deceased, but by that of others, and this is made known to the people so that scandal is avoided, the funeral rites in church can be held, not otherwise. If one had ordered the cremation of his body, it must be certain, not conjectured, that he changed his wish.

If the funeral services are forbidden because of cremation, it is also forbidden to bury the ashes in consecrated ground, and should the civil authorities force burial in consecrated ground, the clergy should protest and take no part in the burial. In order to offset the propaganda for cremation, the bishops of each ecclesiastical province should have a meeting and discuss ways and means how cremation is to be fought and pass regulations accordingly. They shall inform the Holy See about the steps they have taken in this matter (Holy Office, June 19, 1926; *Acta Ap. Sedis,* XVIII, 282).

(*k*) According to Canon 1221 the religious superior has the right to bury professed religious and novices. The Holy See has, however, declared that postulants and students in religious houses do not come under the provisions of Canon 1221 (Committee, July 20, 1929; *Acta Ap. Sedis,* XXI, 573).

(*l*) Concerning prayers in the vernacular at funerals, the Holy See in an answer to the Bishop of Rochester, N. Y., said that the funeral sermon may be given either after Mass or after the absolution and prayers, but no prayers in the vernacular are to be recited in connection with the funeral rites (Sacred Congregation of Rites, April 29, 1931; *Homiletic and Pastoral Review,* December, 1931, 301). The answer was not published in the *Acta Apostolicæ Sedis.*

(*m*) The pastor of quasi-domicile of the deceased is entitled to conduct funeral services and receive the offerings made for the services (Sacred Congregation of the Council, June 9, 1923; *Acta Ap. Sedis,* XVII, 508).

(54) Concerning Fast and Abstinence.

(*a*) May one with a safe conscience follow the teaching of authors that, after the promulgation of the Code, one may on days on which fast only is prescribed eat flesh meat several times a day? *Answer:* No, that teaching cannot be followed (Committee, October 20, 1919; *Acta Ap. Sedis,* XI, 480).

(*b*) May flesh meat be eaten several times a day on days on which fast only is prescribed by those who are not obliged to fast for reason of age, work, or poor health? *Answer:* Yes, they may eat meat several times a day (Sacred Congregation of the Council, October 17, 1923; *Archiv für katholisches Kirchenrecht,* CIII, 163).

(*c*) Does the law of abstinence cease in France on holydays of obligation kept by the universal Church but suppressed in France by concession of the Holy See—namely, the feasts of the Circumcision, Epiphany, Immaculate Conception, and Sts. Peter and Paul—when such holydays fall on an abstinence day? *Answer:* No, the abstinence does not cease (Committee, February 17, 1918; *Acta Ap. Sedis,* X, 170).

(*d*) In accordance with Canon 1252, § 4, does the fast cease when the holyday which has a vigil with fast falls on Monday, so that it is no longer obligatory to anticipate the fast on Saturday? *Answer:* Yes, the fast ceases, but Canon 1253 regarding the obligation of the fast by vow, by constitutions and rules of religious organizations, remains in force. Furthermore, it was asked whether the anticipation of the vigil fast on Saturday (of feasts falling on Monday) applies to feasts during Lent, as well as to feasts during the rest of the year? *Answer:* The abolition of the anticipation of the vigil fast applies to the whole year (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 576).

(*e*) Is the fast only or both fast and abstinence obligatory when the Feast of St. Joseph, March 19, falls on a Friday or Saturday, and does the law of abstinence cease, if the feast falls on one of the ember days? *Answer:* The precept of Canon 1252, § 4, is to be observed—i.e., neither fast nor abstinence cease when a holyday occurs during Lent (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 576).

(*f*) If in some diocese or country the abstinence on Saturdays in Lent has by order of the Holy See been transferred to Wednesdays, strangers who are temporarily staying in that diocese or country are at liberty to keep the abstinence according to the special law of the place where they are staying, or eat meat on that day and observe the Saturdays kept in the place of their residence. If scandal might arise from such action, they must avoid giving scandal—e.g., by stating that as strangers they are not bound to observe the abstinence on Wednesday (Sacred Congregation of the Council, February 9, 1924; *Acta Ap. Sedis,* XVI, 94).

(*g*) The Holy See has declared that the "magnus populi concursus" in Canon 1245, § 2, for reason of which the Ordinary may dispense a whole town or parish from fast and abstinence, implies a great con-

course of people in one individual parish. The bishop could therefore dispense for the whole territory of such a parish (Committee, March 12, 1929; *Acta Ap. Sedis,* XXI, 170).

(55) Concerning the Custody and Cult of the Holy Eucharist.

(*a*) May the Ordinary, in view of immemorial custom, give permission for the keeping of the Blessed Sacrament in churches charged with the care of souls, though they are not properly speaking parish churches, but subsidiary chapels? *Answer:* Yes, he may (Committee, May 20, 1923; *Acta Ap. Sedis,* XVI, 115).

(*b*) Is Canon 1267 (which rules that in religious houses and pious institutes the Blessed Sacrament cannot be kept except in the church or principal oratory) to be understood in such a sense that it is forbidden to keep the Blessed Sacrament in the principal oratory in which the community convenes for religious exercises, if there is a public church attached to the institute where the Blessed Sacrament is kept for the benefit of the public. And, if it is permitted to keep the Blessed Sacrament in both places, is it permissible even if the church ordinarily remains closed to the public? Finally, may the Blessed Sacrament be kept in several oratories of the same institute, if the various classes of members have their separate oratories—e.g., one for novices, another for the professed, a third one for the students of the academy or college—or may it be kept in one oratory only in an institute? *Answer:* The meaning of Canon 1267 is this: If the religious house or pious institute has a public church and uses that church for the ordinary daily exercises of piety, the Blessed Sacrament may be kept in that place only; otherwise, the Blessed Sacrament may be kept in the principal oratory of the religious house or pious institute, without prejudice to the right of the church, if it has any, to keep the Blessed Sacrament; the one oratory only is entitled to have the Blessed Sacrament, unless in the same building there are several distinct and separate families so that it amounts to several religious houses or institutes (Committee, June 2–3, 1918; *Acta Ap. Sedis,* X, 346).

(*c*) A statue of the Sacred Heart of Jesus may, according to the prudent judgment of the Ordinary, be placed on the altar of the Blessed Sacrament, not on the tabernacle but behind it near the wall; or it may be placed in a niche or shrine in the wall near the altar of the Blessed Sacrament (*Acta Ap. Sedis,* XVIII, 291).

(*d*) Are the churches in which in virtue of Canon 1274, § 1, the public exposition of the Blessed Sacrament can take place without permission of the Ordinary on the Feast of Corpus Christi and within

the octave at Mass and Vespers, those churches only which have the right to keep the Blessed Sacrament? *Answer:* Yes, but the precept of Canon 1171 concerning the right of the local Ordinary to regulate the divine services in all non-exempt churches must be observed (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 529).

(*e*) Concerning the Masses during the Forty Hours' Adoration the Holy See ordains for the purpose of harmonizing the former rubrics with the new ones of the Roman Missal as follows: (1) the Solemn Votive Mass of the Blessed Sacrament or *pro pace* is permitted on those days on which the Solemn Votive Mass *pro re gravi et publica simul causa* may be celebrated according to the new rubrics of the Roman Missal, tit. II, n. 3. On those days on which this Solemn Votive Mass is not permitted there shall be added in the Solemn Mass of the day the oration from the Solemn Votive Mass of the Blessed Sacrament, which shall be joined to the oration of the day under one conclusion. The oration of the Blessed Sacrament is to be omitted for reason of the identity of the mystery on feasts of the Passion, Cross, Holy Redeemer, Sacred Heart and Precious Blood, according to Decree n. 3924, ad IV, July 3, 1896; (2) in the Solemn Votive Mass of the Blessed Sacrament or *pro pace* and in the Solemn Mass which takes the place of the impeded Votive Mass, only those commemorations shall be made which are prescribed to be made in the Solemn Votive Mass *pro re gravi et publica simul causa,* according to the new rubrics of the Missal, tit. II, n. 3, and tit. V, nn. 3–4; (3) in the Solemn Votive Mass *pro pace,* and in private Masses which are celebrated during the three days' exposition, the collect of the Blessed Sacrament is to be added, even when more solemn feasts of the Universal Church occur, not, however, under the same conclusion with the oration of the Mass, but after the orations prescribed by the rubrics. This commemoration is to be omitted if the Mass or a commemoration occurring in the Mass is of an identical mystery of the Lord and in Masses which are celebrated on All Souls' Day; (4) in the Solemn Votive Mass *pro pace,* even when it is celebrated outside of a Sunday, the Credo is to be added, according to the new rubrics of the Missal, tit. VII, n. 3, and the Decree n. 3922, tit. II, § 3, June 30, 1896 (Sacred Congregation of Rites, April 27, 1927; *Acta Ap. Sedis,* XIX, 192).

(*f*) To the question whether it is permissible, or whether the local Ordinary can tolerate the custom, to say Low Masses or sing High Masses before the Blessed Sacrament exposed but veiled, or before the ciborium placed inside the opened tabernacle or outside of it, the Sacred Congregation of Rites answered that it is not lawful, and that the former prohibitions to say Mass at the altar of exposition or give

Holy Communion from it are still in force and should be enforced by the local Ordinaries (July 27, 1927; *Acta Ap. Sedis,* XIX, 289).

(*g*) To the questions (1) whether the oration of the Blessed Sacrament, outside the Forty Hours' Adoration, is to be said in the Mass which is celebrated at the altar at which immediately after Mass the Blessed Sacrament is exposed for a public cause, provided the Mass or a commemoration in the Mass is not of an identical mystery of the Lord; (2) whether the oration, even on more solemn feasts of the Universal Church, is to be always said under a separate conclusion and after the orations prescribed by the rubrics and before the *oratio imperata* prescribed by the local Ordinary; (3) whether in all the Masses which are said or chanted while the exposition of the Blessed Sacrament for a public cause lasts, even on the more solemn feasts of the Universal Church, provided the Mass or a commemoration in the Mass is not of a mystery of the Lord identical with the Blessed Sacrament, and provided it is not a Mass said on All Souls' Day—the Sacred Congregation of Rites answered that the commemoration of the Blessed Sacrament is to be made in all these cases. If, however, the oration of the Blessed Sacrament takes the place of an impeded Votive Mass of the Blessed Sacrament conceded by Apostolic Indult or prescribed by the local Ordinary for a grave and at the same time public cause, the oration of the Blessed Sacrament is to be said under one conclusion with the first oration of the Mass (Sacred Congregation of Rites, January 11, 1928; *Acta Ap. Sedis,* XX, 90).

In the Mass on Holy Saturday the oration of the Blessed Sacrament is to be added, if immediately after the Mass the exposition of the Blessed Sacrament takes place on the same altar for the opening of the Forty Hours' Adoration (Sacred Congregation of Rites, June 8, 1928; *Acta Ap. Sedis,* XX, 237).

(*h*) The Holy See has declared that by the term "public exposition" in Canon 1274, § 1, is meant also Benediction with the Blessed Sacrament which is wont to be given after public exposition in the monstrance (Committee, March 6, 1927; *Acta Ap. Sedis,* XIX, 161).

(*i*) The Holy Office has answered the Archbishop of Prague that the radio broadcasting of liturgical functions is not advisable (*"Non expedire"*), although in some churches it has been done by abuse without the permission of the Holy Office (January 26, 1927; *Ecclesiastical Review,* February, 1930, p. 184).

(*j*) Concerning Canon 1262, § 2, which demands that women should be dressed modestly when attending divine worship, the Holy See has issued a special instruction on modest dress for women (Sacred Congregation of the Council, January 12, 1930; *Acta Ap. Sedis,* XXII, 26).

(*k*) Concerning Gregorian Chant and sacred music the Holy See

has issued a special instruction (Apostolic Constitution, December 20, 1928; *Acta Ap. Sedis*, XXI, 33–41).

(*l*) The Holy See has declared that the bishop may allow the keeping of the Blessed Sacrament in subsidiary chapels of a parish church only because of immemorial custom (Committee, May 20, 1923; *Acta Ap. Sedis*, XVI, 115).

(56) Concerning Sacred Images.

It is not permissible to represent the Holy Ghost under a human form, either with the Father and the Son or alone (March 16, 1928; *Acta Ap. Sedis*, XX, 103).

(56a) Authentication of Relics.

According to Canon 1283, § 2, the Vicar General needs a special mandate of the bishop to authenticate part of a relic taken from an authenticated relic. According to Canon 1285, § 1, the Vicar General cannot without a special mandate of the bishop issue a new authentication document or put a new seal on a sacred relic (Committee, July 17, 1933; *Acta Ap. Sedis*, XXV, 345).

(57) Concerning Sacred Processions.

(*a*) The laws of the Sacred Liturgy do not forbid the holding of two or more processions on the same day, provided they are held at different hours, as was decided in the case between the Friars Minor and the Friars Preachers in India concerning the Corpus Christi procession on Sunday within the octave; the bishop was to fix the hours for the two processions. [Rota, Feb. 3, 1922; *Acta Ap. Sedis*, XIV, 295].

(*b*) Concerning the carrying of the Blessed Sacrament in processions, the following questions were submitted to the Holy See: (1) Is it permissible or proper in solemn procession with the Blessed Sacrament, especially at the conclusion of Eucharistic Congresses, to carry the Blessed Sacrament on a triumphal carriage covered with a canopy and magnificently ornamented, drawn by horses, while a priest kneels beside the monstrance to prevent it from falling? (2) Is the use of a carriage and horses permissible or proper when, in place of the Blessed Sacrament, the statue of the Blessed Virgin or the relics of Saints are carried? (3) Is the use of horse and carriage permissible, not only for reason of extraordinary solemnity, but also whenever the procession covers a long distance? (4) May an automobile be employed instead of horse and carriage? *Answer:* No, in reference to all points. The Sacred Congregation adds that, in the Eucharistic Congress held at Rome in 1922, no carriage was used for carrying the Blessed Sacrament, and that this is in harmony with the *Cæremoniale*

Episcoporum and former Decrees (Sacred Congregation of Rites, October 28, 1922; *Acta Ap. Sedis,* XVI, 103).

(58) Concerning Sacred Vessels.

Is it permissible to use the four chalices in Holy Mass which are described in the magazine *Benediktinische Monatsschrift* (Beuron, 1920, n. 3, 4), are there highly praised, and are styled by the names of *Poculum cæleste, Genimina vitæ, Flos de Virgine,* and *Virga Jesse? Answer:* The matter is to be submitted to the local Ordinary, who shall take care that the chalices do not diverge from the traditional forms, so that all danger of spilling the Sacred Species and all scandal to the faithful shall be avoided (Sacred Congregation of Rites, June 30, 1922; *Acta Ap. Sedis,* XIV, 437).

(59) Concerning Seminaries and Universities.

(*a*) Concerning the seminaries and studies of seminarians, the Holy Father Pope Pius XI gave to the Cardinal Prefect of the Sacred Congregation of Seminaries and Universities directions which the Sacred Congregation is to urge in its supervision of Seminaries and Catholic Universities: (1) the priests are to be urged to comply with the precept of Canon 1353 to endeavor to promote vocations for the priesthood, by taking a special interest in boys who give indication of a vocation to the priesthood, by trying to keep them from the contagion of the world, by leading them on to piety, and by teaching them and fostering their vocation; (2) no other students shall be allowed to stay in the seminary except those who intend to study for the priesthood; (3) the Latin language must be thoroughly taught in the minor seminary, so that the seminarians may have no difficulty in the major seminary where the classes and recitations are, of course, in Latin; (4) the seminarians must as a minimum have two years of philosophy; it is to be scholastic philosophy, and the professors should follow the doctrine and principles of St. Thomas Aquinas; (5) theology should be taught from the Sacred Scriptures, from the documents of the Roman Pontiffs, the Fathers of the Church and the Councils. The historical method alone of teaching dogmas and contrary errors is not sufficient; (6) pastoral theology must teach the seminarians to apply the theology they have learned to the care of souls. That course must consider the practical problems of the guidance of souls and the application of the unchanging principles of faith and morals to the ever-changing conditions of the people (August 1, 1922; *Acta Ap. Sedis,* XIV, 449).

Concerning the faculty of Sacred Scripture at seminaries, Pope Pius XI ordained by *Motu Proprio* that such office shall be given only to those who have taken the special course at the Biblical Commission or the Biblical Institute at Rome, and obtained at least the degree of baccalaureate (April 27, 1924; *Acta Ap. Sedis,* XVI, 180).

(*b*) Summary of the letter addressed to all the Ordinaries of the United States by the Sacred Congregation of Seminaries and Universities, approved by the Holy Father, January 25, 1928, and sent to the Ordinaries through the Apostolic Delegation at Washington:

The parochial schools should furnish the vocations for the priesthood (cfr. Canon 1353). The Society for Developing Priestly Vocations (*Opera delle Vocazioni Ecclesiastiche*) should be established in every diocese, because up to the present time many bishops have found themselves obliged to take foreign priests in order to provide for the spiritual needs of their people. By priestly vocations we understand the vocations of those youths who give positive signs of desiring to embrace the priesthood or the religious state, and not the vocations of adults, which are to be looked upon as exceptional cases.

As to preparatory seminaries the following is decided: (1) that preparatory seminaries which now exist in smaller cities shall be changed by degrees into minor seminaries, where students reside both day and night under the watchful care of responsible superiors; (2) in the larger centers, likewise, the preparatory seminary shall be changed into a minor seminary; (3) before any action is taken in the premises, Ordinaries should, through the medium of the Apostolic Delegate, refer each specific case to the Sacred Congregation of Seminaries and Universities.

In major seminaries not only goodness and moral honesty must be instilled into the hearts of the seminarians but also all those virtues which will make the future priest a living image of Our Saviour, Jesus Christ. Discipline and perfect observance of the statutes together with zealous study under the leadership of competent professors is necessary, but still more there is need of a spiritual director who shall devote all his time to things of God and of the soul and who shall never, for any reason whatsoever, interfere with the external discipline of the seminary. His duty is to know the life and character of the seminarians so as to be able to give them prudent and safe advice regarding their vocation. In private conversation and in conferences he shall teach the seminarians the dignity, the office, and the duties of the priesthood of Christ. He shall teach them mental prayer, select the book for their meditation in common, and himself assist at this exercise.

As to confessors, the Code prescribes that, besides extraordinary

confessors, at least two other priests assist the spiritual director in hearing the confessions of seminarians. In seminaries in charge of a religious order, the office of confessor may be exercised by professors, provided they are approved for that purpose by their own superior and by the Ordinary; the usual faculties of the diocese do not make him a confessor of seminarians. In seminaries conducted by the secular clergy, professors are only permitted to be extraordinary confessors.

The various departments of a seminary must be well harmonized so as to achieve a true seminary education. Recreation and play are necessary, but athletics must not be given undue importance, and the students should not engage in athletics before the public on an athletic field.

As to studies it is prescribed: (1) in the literary courses of the seminary the Latin language is to be regarded as the most important element, and it must have precedence over every other subject. The course in Latin must not be purely theoretical. By oral and written exercises, by competitions and the like practical means, the aim of such course should be that the students know it and can use it; (2) students must not be admitted to the study of philosophy and theology who do not possess a sufficient mastery of the Latin language. Students from another institution coming to the seminary must be examined in Latin. A compulsory special course in Latin must be conducted for all who are found not to possess a working knowledge of that language.

As to the study of philosophy and theology, Canons 1365–1366 must be observed. Lectures on philosophy, theology, and Canon Law, and recitations in these, are to be held in Latin, as also all examinations, especially the ones for admission to Sacred Orders.

Canon Law should be given a more important place in the seminary curriculum than it has held up to date. A knowledge of Canon Law is of daily use in the priest's ministry, and is of special value in the government of a diocese. Professors should have a degree in Canon Law from a university approved by the Holy See.

The professors should receive a salary which enables them to devote themselves to teaching without being distracted by cares of an economic nature. The salary, in a progressively increasing scale, should enable them to get the means to develop and perfect themselves in their chosen field of study, to live with dignity, and to permit them to lay aside something as a provision against sickness or old age.

(*c*) The Sacred Congregation of Seminaries and Universities orders all local Ordinaries to make a report to the same Congregation every three years on the status of the diocesan seminary. It is to be made by answering the form of questions published with this Decree. Those Ordinaries who have charge over an inter-diocesan or regional seminary

shall also make the same report. The three years' periods shall be reckoned from January 1, 1924. In the first year of the triennium the report shall be made by the Ordinaries of Italy, France, Spain and the adjacent isles; in the second year by the Ordinaries of the other countries of Europe; in the third year by those of all American countries. If during the triennium the text-books of philosophy, theology, Sacred Scripture, or Canon Law are changed, the matter shall at once be reported to the Sacred Congregation (February 2, 1924; *Acta Ap. Sedis,* XVII, 547–51).

(*d*) Canon 1365, § 3, speaks of lectures in the seminary on pastoral theology and of practical exercises especially in the manner of teaching catechism to children and others. The first and greatest duty of all priests, especially the pastors, is the office of instructing the Christian people, for on its fulfillment or neglect depends to a great extent the salvation or the ruin of souls. "The priests and other clerics . . . shall assist their own pastor in this most sacred task, and may be made to comply with this duty by the Ordinary under threat of penalties" (Canon 1333, § 2). A long and very careful preparation must be made for so important a duty. The seminarians must acquire the art of teaching catechism by attending classes that deal specially with the subject and by practical exercises.

Pope Pius X, in his Encyclical "Acerbo nimis" (April 15, 1905), said: "It is far easier to find an orator of eloquence and elegance of speech than to find a catechist whose teaching is in every respect praiseworthy. Wherefore, whatever natural aptitude anyone may have for thinking and speaking, let him be firmly convinced that he can never speak on Christian doctrine to the people or to the children with spiritual efficacy, unless he has prepared and qualified himself by much reflection and study."

The bishops are requested to see that catechetics are taught intensively in their seminaries (Sacred Congregation of Seminaries and Universities, September 8, 1926; *Acta Ap. Sedis,* XVIII, 453–555). Another Letter of the same Sacred Congregation to the bishops on the same subject (catechetics) was issued on August 28, 1929 (*Acta Ap. Sedis,* XXII, 146–148).

(*e*) To the question whether the law of the Encyclical "Pascendi," September 8, 1907, is still in force (namely that nobody shall in future be given the degree of doctor in theology or Canon Law unless he has made the prescribed course in scholastic philosophy and that otherwise the conferring of the degree is null and void), the Sacred Congregation of Seminaries and Universities answered in the affirmative (April 29, 1927; *Acta Ap. Sedis,* XIX, 194). However, as to laymen desiring to study Canon Law and to obtain the doctor's degree, it

was declared that they may be admitted though they have not taken the two years' course of philosophy (Sacred Congregation of Seminaries and Universities, April 11, 1928; *Acta Ap. Sedis,* XX, 157).

(*f*) Prerequisites for obtaining academic degrees in Sacred Scripture are: (1) two years' course in philosophy and a complete course in theology in a university or school approved by the Holy See and rightful acquisition of the degree of doctor in theology; (2) that those who have made the required studies in an institute which does not have the right by concession of the Holy See to confer the doctorate, shall have at least for two years studied theology in a university or school approved by the Holy See and have obtained the doctorate; (3) men of religious organizations who have made the studies according to law in their own institute, shall have obtained a title which, by concession of the Holy See to the organization, is equivalent to the doctorate in theology (Papal Committee on Biblical Affairs, February 26, 1927; *Acta Ap. Sedis,* XIX, 160).

The Holy See has published new Constitutions which are to be adopted by all Catholic Universities and by other Universities which have a Catholic Faculty under the jurisdiction of the Church (Apostolic Constitution, May 24, 1931; *Acta Ap. Sedis,* XXIII, 241–262). The Sacred Congregation of Seminaries and Universities published Regulations based on the aforesaid Apostolic Constitution, detailing the practical conduct of the studies and all things connected with them (June 12, 1931; *Acta Ap. Sedis,* XXIII, 263–284).

(*g*) Canon 1363, § 1, ordains that the bishop receive only legitimate children into the seminary. The Holy See has declared that children legitimized by subsequent marriage of their parents are to be considered legitimate (Committee, July 13, 1930; *Acta Ap. Sedis,* XXII, 365).

By Canon 1116 children born out of legitimate wedlock are legitimized by subsequent marriage, provided the parents were free to marry either at the time of conception, or pregnancy, or birth. At the latest, the diriment impediment to their marriage must have been removed at the time of the birth of the child. Children conceived in adultery or sacrilege are not legitimized even if the solemn vows or major order impediment had been removed by dispensation before birth of child (C. 1114).

(60) Concerning the Censorship and Prohibition of Books.

(*a*) Is the particle "et" in Canon 1391—"aut nisi edantur sub vigilantia episcoporum *et* cum adnotationibus, etc."—to be interpreted as copulative or disjunctive? *Answer:* It is to be interpreted as copulative (Committee, May 20, 1923; *Acta Ap. Sedis,* XVI, 116).

(*b*) The Holy See has declared that the condemnation of books

and other publications by the Sacred Congregation of the Holy Office is to be observed also by the Churches of Oriental Rites because such condemnations are not so much disciplinary measures as rather matters pertaining to the doctrine of the Church (Sacred Congregation for the Oriental Church, May 26, 1828; *Acta Ap. Sedis,* XX, 195).

(61) Concerning the Profession of Faith.

Superiors in clerical societies without vows, spoken of in Canons 673–681, are obliged to make the profession of faith prescribed by Canon 1406, § 1, n. 9 (Committee, July 25, 1926; *Acta Ap. Sedis,* XVIII, 393).

(62) Concerning Division of Parishes.

The local Ordinaries can, in virtue of Canon 1427, § 1, without permission from the Holy See, divide parishes or disrupt the territory of parishes, though accidentally by the division of the territory the *decimæ* (certain offerings of the faithful) are divided [Sacred Congregation of the Council (*in Causa Utinensi*), January 14, 1922; *Acta Ap. Sedis,* XIV, 229).

(63) Concerning the Conferring of Benefices.

(*a*) A certain pastor, at the invitation of his Ordinary, had resigned his parish under condition of a life pension. Afterwards, the pastor had recourse to the Apostolic See, requesting that the resignation be declared null and void, because contrary to Canons 1486 and 1429. The question was proposed whether there is certainty of the nullity of the resignation. *Answer:* No. The reasons given are that, in accordance with Canon 1429, § 2, the Ordinary can impose on the parishes a pension in favor of the former pastor, provided the pension does not exceed one-third of the income of the parish. Canon 1486 has reference to a condition properly so called, not to a proposition made by the bishop of which there is question in the case (Sacred Congregation of the Council, November 11, 1922; *Acta Ap. Sedis,* XV, 454).

(*b*) Can the local Ordinary admit the resignation of a parish with the reservation of a pension for the life of the one pensioned, which pension is to be paid by the parish to the resigning pastor? *Answer:* Yes, provided the precept of Canon 1429, § 2, concerning the amount of the pension is observed (Committee, May 20, 1923; *Acta Ap. Sedis,* XVI, 116).

(*c*) In accordance with Canon 1432, § 3, does the conferring of a benefice devolve on the Holy See if the Ordinary does not, within six

months from the time he obtains certain knowledge of the vacancy of a benefice, confer the benefice, provided the delay is not caused by his neglect but by absolute shortage of men for the position? *Answer:* No, he does not lose the right to fill the benefice (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 577).

(*d*) May the bishop in the conferring of non-reserved parishes impose for once only a moderate tax in favor of the seminary, though the parish of which there is question is subject to the seminary tax (cfr. Canons 1355, 1356, 1441)? *Answer:* He shall in each instance have recourse to the competent Sacred Congregation (Committee, October 16, 1919; *Acta Ap. Sedis,* XI, 479).

(*e*) Since Canon 1435, § 1, n. 1, reserves to the Holy See the conferring of benefices (including parishes) of the Monsignori or Domestic Prelates made vacant by death, transfer, resignation, promotion (e.g., to the government of a diocese), special instructions were issued prescribing what is to be done when such a vacancy occurs (Apostolic Datary, November 11, 1930; *Acta Ap. Sedis,* XXII, 525).

(64) Concerning the Right of Patronage.

(*a*) What is the force of the verb "curent" in Canon 1451, § 1? *Answer:* It means that the local Ordinaries should try to persuade the patrons that, in place of the right of patronage, or at least in place of the right to present the holder of a benefice, they should accept spiritual suffrages (even perpetual ones) for themselves and their families, and that therefore the patrons, especially ecclesiastics, act in a most praiseworthy manner if they act on this suggestion of the bishop (Committee, November 12, 1922; *Acta Ap. Sedis,* XIV, 663).

(*b*) The Patriarch of Venice (Italy) explained to the Holy See that in the Venetian province there were a number of parishes in which by ancient custom the people of the parish choose the pastor (*electio seu præsentatio popularis*), but that all candidates were subject to the *examinatio* or *concursus.* After the promulgation of the Code, which in Canon 1452 admits the popular election or presentation only under condition that the people elect one of three candidates proposed by the bishop, some priests refused to make the *concursus* before their nomination by the bishop. The Patriarch asks whether the ancient practice of popular election or presentation may be permitted to continue? *Answer:* Yes. The answer of the Sacred Congregation is based on Canon 5 which rules that centenary and immemorial customs contrary to the Code and not expressly rejected by it may be suffered to continue, if the local Ordinaries do not believe it wise in considera-

tion of the circumstances to stop those customs [Sacred Congregation of the Council (*in causa Veronensi et aliarum*), February 14, 1920; *Acta Ap. Sedis,* XII, 163].

(*c*) In accordance with Canon 1462, must parishes and other benefices subject to laical right of patronage always be conferred by *concursus,* so that the patron, though a layman, cannot present a cleric except one who has been approved in the *concursus? Answer:* Yes, if the parishes and other benefices of laical patronage are by particular law (e.g., by the charter of the foundation of the benefice or by custom) subject to the *concursus,* but not otherwise (Committee, November 12, 1922; *Acta Ap. Sedis,* XIV, 663).

(65) Concerning Diocesan Taxes.

(*a*) The bishops of a certain ecclesiastical province in France, in accordance with Canons 1504 and 1507, submitted to the Holy See the schedule of taxes. They stated that the taxes or fees of the chancery office did not suffice to cover the expenditures of the chancery office, and that the bishops were obliged either to defray the expenditures from their own income or to find other means of covering the expenditures. Wherefore, the tax called *cathedraticum* shall be very useful for the purpose. The basis for this tax was to be 20 centimes for each parishioner, so that a pastor who had 500 souls in the parish paid only 100 francs for the *cathedraticum,* and a parish which had 1000 souls paid 200 francs. The money is not to be collected from each individual parishioner, but is to be paid from the income of the churches and confraternities. The Holy See answered that, as the matter is explained, it was not expedient. In the "animadversiones" of the answer, it is explained that the proposed scheme did not harmonize with the juridical notion of the *cathedraticum* as described in Canon 1504, because the *cathedraticum:* (1) must be paid by all churches and benefices and laical confraternities; (2) must be a fixed sum equal for all; (3) is paid merely as a mark of subjection to the bishop (Sacred Congregation of the Council, March 13, 1920; *Acta Ap. Sedis,* XII, 444).

(*b*) The bishops of a certain ecclesiastical province submitted to the Holy See for the necessary recognition the schedule of taxes to be charged in the entire province. In the schedule there was under each head a highest and a lowest fee, so that the individual Ordinaries might, according to the circumstances of their diocese, demand a fee which was between the two extremes. The Holy See answered that the definite approval of the proposed schedule is to be delayed. The bishops of the province should at a future meeting reconsider the

matter, drop the double tax, and fix one tax only, taking into account the Bull of Pope Innocent, October 8, 1678, the precepts of the Code in Canons 1507, § 1, 1234, 1056, and the Decree of this Sacred Congregation issued June 10, 1896; in the imposition of taxes or fees discretion is to be used (Sacred Congregation of the Council, December 11, 1920; *Acta Ap. Sedis,* XIII, 350).

(66) Concerning Contracts.

(*a*) May votive offerings be alienated without the *beneplacitum* of the Holy See? *Answer:* No. The reasons given for the answer are that (i) there is an intimate connection between those offerings and the objects of cult, devotion or piety (cfr. Canon 1281, § 1); (ii) the will of the donors who desire that the offerings be faithfully preserved; (iii) the perpetual custom and practice of the Church not to dispose of the votive offerings (Sacred Congregation of the Council, July 12, 1919; *Acta Ap. Sedis,* XI, 416).

(*b*) A certain bishop proposed the following questions: (i) for the alienation of so-called precious objects is it always necessary to obtain the *beneplacitum* of the Holy See, or may the Ordinary within the limits of a certain sum allow the alienation? *Answer:* The matter shall be referred to the Committee for the Authentic Interpretation of the Code. (ii) Is the *beneplacitum* of the Holy See required for the alienation of any votive offerings, or may the Ordinary dispose of them up to a certain amount? *Answer:* For the alienation of all votive offerings the *beneplacitum* of the Apostolic See is required (there seems to be question of jewels, objects wrought in gold and silver and other gifts of that kind offered at miraculous pictures and other sacred shrines). (iii) Is the *beneplacitum* of the Holy See required, even when the donor of his own accord consents to the alienation? *Answer:* Yes, even in that case the *beneplacitum* is required. (iv) Does the mere fact that an offering is made at an altar or a sacred image of itself imply that the offering was made in fulfillment of a vow, or must it be positively known that the offering was made in fulfillment of a vow? *Answer:* The offering is presumed to be a votive offering, unless the contrary will of the offerer is otherwise proved. (v) Has the Ordinary the right, when the administrative board and the Cathedral Chapter disagree, to supply the consent of one or the other in the matter of alienation, as well as in any other contract of the same nature? *Answer:* No, he has not the right (Sacred Congregation of the Council, January 14, 1922; *Acta Ap. Sedis,* XIV, 160).

(*c*) Is the price spoken of in Canon 1532, § 3, the same as the

valuation of the object by conscientious experts made in accordance with Canon 1530, § 1, no. 1, or does Canon 1532, § 3, refer to a higher price which was offered in public auction (cfr. Canon 1531, § 2)? *Answer:* The valuation of the experts only is to be considered (Committee, November 24, 1920; *Acta Ap. Sedis*, XII, 577).

(*d*) Invalid alienations of ecclesiastical goods made without the required permission, if the value of those goods does not exceed thirty thousand francs, cannot be validated by the Ordinary (Sacred Congregation of the Council, May 17, 1919; *Acta Ap. Sedis*, XI, 382).

(*e*) Canon 1536, § 1, is to be applied also in the interpretation of donations made before the promulgation of the Code (Apostolic Signatura, April 6, 1920; *Acta Ap. Sedis*, XII, 252).

(*f*) If last wills made in favor of a religious or charitable cause are invalid according to civil law, the injunction of Canon 1513, § 2, is preceptive (Committee, February 17, 1930; *Acta Ap. Sedis*, XXII, 196).

(*g*) Alienation of ecclesiastical goods valued above 30,000 francs needs the permission of the Holy See even if various objects, each of lesser value, are disposed of *unico actu* and the aggregate sum exceeds 30,000 francs (Committee, July 20, 1929; *Acta Ap. Sedis*, XXI, 574).

(*h*) The Sacred Congregation of Religious sent an Instruction to the Religious communities in the United States through the Apostolic Delegate on November 13, 1936. The sum of money for which the Apostolic *beneplacitum* is required are sums of money (debts and obligations of all kinds) over $6000. It is declared there that alienation includes not only purchases or transfer of property, but includes as well any contract, debt or obligation. Canon Law regards all transactions which may render the financial condition of the institute, province or Religious house less secure as alienations. Specifically it is declared that (1) the issuance of bonds or debentures upon ecclesiastical property and the sale of such bonds in the public market or to private investors, and (2) the system of soliciting or accepting funds under the so-called annuity agreement providing for payments of an annuity to the donor for life, come under the term of alienation and require the permission of the Holy See when the aggregate sums from either one or several of the sources of indebtedness exceed $6000.

(67) Concerning Pious Foundations.

(*a*) Laical chaplaincies which have not been accepted by the bishop may be changed or suppressed by the founders while they are living and also by last will. Cfr. Canon 1544, § 2 [Roman Rota, February 26, 1921 (*in Causa Bergomensi*); *Acta Ap. Sedis*, XIII, 505].

(*b*) In accordance with Canons 1517 and 1551, can the Ordinary for reason of the diminution of the income reduce foundation Masses, if such an emergency is explicitly provided for in the charter of the foundation? *Answer:* Yes, he can (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 529).

(68) Concerning the Competent Forum.

(*a*) The Bishop of Paderborn explained to the Holy See that in his diocese disputes between Catholics concerning the right to pews in church are usually taken to the civil courts. He inquires whether this custom can be approved or at least tolerated, especially when the litigants explicitly appeal to the civil courts from his decision given by way of administration? *Answer:* The custom cannot be tolerated, all the more so when there is question of suing in the civil court against the order of the Ordinary. Care should be taken to abolish the custom spoken of in the case. Cfr. Canon 1553, § 1, n. 1 [Sacred Congregation of the Council (*in Causa Paderbornensi*), December 11, 1920; *Acta Ap. Sedis,* XIII, 262].

(*b*) In accordance with Canon 1565, § 1, can a party be sued before the Ordinary of the place where the contract was made or is to be executed, though that party has left the place? *Answer:* No, he cannot be sued in that place after he has left it, but the parties can make a special agreement in the contract (cfr. Canon 1565, § 2) to be sued on the contract in a certain place, though they are away from that place (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 529).

(69) Concerning the Judge.

The Archbishop of Breslau requested the Holy See to declare: (1) whether the custom in his diocese existing for one hundred and seventy years of admitting laymen experienced in law to a decisive vote in matrimonial and civil cases, but excluding them from criminal cases, can be called legitimate and may be tolerated; (2) whether in future these laymen can be admitted in ecclesiastical trials, excepting criminal trials, as auditors to draw up the cases or as assessors with a consultive vote in those trials which have some connection with the civil laws. *Answer:* No, in both points. In the "animadversiones" it is explained that laymen are to be entirely excluded from the office of judge in ecclesiastical trials, and the contrary custom is condemned as subversive to ecclesiastical discipline and not to be tolerated. The auditors and assessors must be taken from the synodal judges, who, in accordance with Canons 1575 and 1581, must be priests (Sacred Con-

gregation of the Council, December 14, 1918; *Acta Ap. Sedis,* XI, 128).

The *officialis* or judge of the diocesan Curia, who is appointed by the Ordinary in accordance with Canon 1573, §§1–2, with ordinary power to judge and without any reservation of cases, may set up a collegiate tribunal by calling in rotation the synodal judges nominated according to Canon 1574, unless the bishop ordains otherwise in individual cases (Committee, July 28, 1932; *Acta Ap. Sedis,* XXIV, 314).

(70) Concerning the Sacred Roman Rota.

(*a*) The Sacred Roman Rota is not competent to try cases which, though they have a residential bishop as a party to the case, originate from an administrative decree or disciplinary measure of the bishop. As, in virtue of Canon 1601, the Roman Rota is entirely incompetent to try such cases, which are reserved exclusively to the Sacred Congregations, it cannot judge on the merits of those cases, nor consider them incidentally, and as it were accidentally. Canon 17 of the laws proper to the Sacred Roman Rota states that the lack of authority of the Rota in these cases is absolute, so that this tribunal cannot even incidentally consider those cases, and, if it does render a decision concerning them, its sentence is null and void (Sacred Roman Rota, April 30, 1923; *Acta Ap. Sedis,* XV, 296).

(*b*) In accordance with Canons 1552–1601, can a judicial trial be instituted against the decrees, acts, or orders of Ordinaries, which have reference to the government or administration of his diocese—e.g., conferring of benefices, offices, etc., or the refusal to confer some benefice or office, etc.? And, if no trial can be instituted for the purpose of (e.g.) forcing the bishop to confer a benefice, office, etc., can a canonical trial be instituted at the tribunal of the Sacred Roman Rota, in accordance with Canons 1557, § 2, and 1559, § 2, for the purpose of obtaining damages suffered through the decree, order, or refusal of the bishop? *Answer:* Neither trial can be instituted. The matter pertains exclusively to the Sacred Congregations to pass judgment on the actions of the Ordinary in disciplinary and administrative matters, and also the judgment as to injury inflicted unjustly by the Ordinary through his measures or acts (Committee, May 22, 1923; *Acta Ap. Sedis,* XVI, 251).

(71) Concerning the Signatura Apostolica.

The *congressus* of the Signatura Apostolica has a twofold jurisdiction—one administrative and the other judicial. As administrative organ of the Holy See, it receives petitions for Papal commissions

and prayers for other rescripts of that kind; as a judicial tribunal it has judicial power (cfr. *Chirographum Bened. XV,* June 28, 1915; *Acta Ap. Sedis,* VII, 320), and can examine the judicial decrees of the Sacred Roman Rota, hear the parties (if it deems it necessary), or, if the case is sufficiently complete, examine the acts and confirm or reject or correct the decision of the Sacred Rota. Matters of greater importance must be submitted to the full tribunal of the Signatura Apostolica [Signatura Apostolica (*in Causa Romana*), November 25, 1922; *Acta Ap. Sedis,* XV, 180].

(72) Concerning Procurators in Lawsuits and Attorneys.

Must clerics and laymen approved as attorneys for the defence in ecclesiastical cases tried at the Roman Curia, even the attorneys of the Consistorial Congregation, obtain approval from the local Ordinary, if they wish to practise law in the diocesan curias? *Answer:* Yes, they cannot practise without the approval of the Ordinary [Signatura Apostolica (*in Causa Romana*), June 23, 1923; *Acta Ap. Sedis,* XVI, 105].

(72a) Concerning Witnesses and Their Testimony.

Each party to a lawsuit is to present to the judge the names of witnesses and the points on which they are to be questioned (cfr. Canon 1761, § 1). The judge may inform the opposing party of the points on which the witnesses are to be questioned in order that the opponent may prepare and exhibit to the judge an interrogatory, provided there is no danger of subornation (Committee, March 12, 1929; *Acta Ap. Sedis,* XXI, 170).

(73) Concerning Suits on the Nullity of Acts.

Canon 1683 rules that an inferior judge cannot pass judgment on the confirmation given by the Roman Pontiff to an act or instrument, unless he has first obtained a mandate from the Apostolic See. As this Canon does not constitute new law but merely repeats the former law, it must be interpreted in accordance with the accepted interpretation of approved authors who wrote on the former law (cfr. Canon 6, n. 2). The confirmation spoken of in Canon 1683 means a confirmation *in forma specifica,* not *in forma communi,* and that specific confirmation must have been issued by the Supreme Pontiff himself, not by the Sacred Congregations, unless the confirmation was not given by one of the Sacred Congregations by their ordinary power, but by authority

specially delegated to it by the Supreme Pontiff. Finally, the letters of the Apostolic See are withdrawn from the judicial recognition of the judges in those cases only in which the letters are issued under clauses which invalidate the action concerning those letters [Sacred Roman Rota (*in Causa Tranensi*), January 30, 1923; *Acta Ap. Sedis,* XV, 125].

(74) Concerning Judicial Sentences.

In accordance with Canons 1874, § 5, and 1894, n. 3, is a sentence null and void which is issued by a collegiate tribunal and subscribed by the presiding judge and a notary only? *Answer:* Yes, because all the judges must subscribe to the sentence (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 529).

(75) Concerning Appeals.

The days within which an appeal must be made are to be computed from the day on which legal notice of the sentence has been given to the parties concerned. In virtue of the Instruction of the Sacred Congregation of Bishops and Regulars, June 11, 1880, it was required that the intimation of the sentence be made by a duly qualified person. According to the law in force at present, the notification of the sentence to the parties is to be made in the manner prescribed by Canon 1877. An irrevocable decision in the civil courts holds good also in the ecclesiastical court [Sacred Roman Rota (*in Causa Vincentinæ Societatis*), March 18, 1922; *Acta Ap. Sedis,* XIV, 652].

(76) Concerning Cases Irrevocably Adjudged and Reinstatement Into Former Right.

The Baroness de Laeffert requested the Signatura Apostolica to declare null and void the sentence of the Roman Rota in her marriage case, or at least to grant her reinstatement into the former right. The Signatura Apostolica refused both petitions, the first because of the lack of reasons recognized in law for the declaration of nullity of the sentence, and the other because there was question of a marriage case, which never becomes irrevocably adjudged. Since the reinstatement in the former right is an extraordinary remedy specially against sentences which have become irrevocably adjudged, the remedy is not applicable in marriage cases [Signatura Apostolica (*in Causa Paderbornensi*), May 31, 1919; *Acta Ap. Sedis,* XI, 295].

(77) Concerning the Competent Forum in Marriage Cases.

Can a wife maliciously deserted by her husband, in accordance with Canon 1964, sue him in a matrimonial case before the local Ordinary of the place where the wife has a quasi-domicile of her own, distinct from that of her husband, or can she sue him only in the diocese where the husband has a domicile or quasi-domicile? *Answer:* She can sue him only where he has a domicile or quasi-domicile.

Can a Catholic woman who has not been legitimately (i.e., by authority of the Ordinary) separated from her non-Catholic husband, and who has a quasi-domicile of her own, sue her husband in the diocese of her quasi-domicile only, or also in the diocese where her husband has a domicile? *Answer:* Since the wife has a quasi-domicile of her own, and also participates in the domicile of her husband, she can sue him either in the diocese of her quasi-domicile or in the diocese of the domicile of her husband, which is also her own domicile in accordance with Canon 1964 (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 529).

The Holy See has issued an instruction on the competency of the judge by reason of quasi-domicile of the plaintiff or petitioner. The judge is to inquire whether the quasi-domicile has been acquired canonically; furthermore, for what reason the parties come to the court of quasi-domicile in preference to that of domicile or of the diocese where the marriage was contracted, and whether perhaps the parties can obtain proofs and documents more easily in the place of quasi-domicile than in that of domicile or marriage. Finally, the judge shall apply to the Ordinaries of domicile and of the place where the marriage was contracted to ascertain whether the petition of the parties and their other assertions made in this preliminary hearing are truthful. Before the answers are received the judge may not proceed with the case. If an Ordinary answers that he believes that the parties carried the case to the court of quasi-domicile to conceal the truth, and he therefore requests that the case be tried in his diocese, the court of quasi-domicile shall decide whether the request of this Ordinary is to be granted (Sacred Congregation of the Sacraments, December 23, 1929; *Acta Ap. Sedis,* XXII, 168–171).

The Instruction of the Holy See of July 1, 1932, addressed to the Catholic Hierarchy on the conduct of marriage cases contained the following points:

(1) Every year in the month of January, the local Ordinaries shall either directly or through the Apostolic Delegate inform the Sacred Congregation of the Sacraments: (*a*) of the names of the *officialis* and other judges, of the *defensor vinculi,* actuary and advocates of the

matrimonial court, giving their academic titles or at least a testimony as to their prudence and knowledge of Canon Law; (*b*) of the amount of money which the court requires the parties to deposit, the taxes and payments usually demanded in each case including the fees of the advocates and of the experts, if they were employed; what provision has been made for gratuitous service of the court for the poor, according to Canons 1908–1916; (*c*) of the number of matrimonial cases introduced, pending, and finished in the first or second instance. For each case it should be stated when the case was introduced and when decided in each instance; the reason for invalidity; title of competency; whether the sentence declared the nullity or upheld the marriage in both the first and second instances, and if the nullity was declared, for what reason, if several reasons were advanced; how the *defensor vinculi* performed his office and whether the parties employed an advocate or procurator; (*d*) of the number of cases which were rejected by the court because they were not considered to have a solid foundation for a trial.

(2) The local Ordinaries were requested to send a statement through the Apostolic Delegate or Nuncio (if there be one in the place, or otherwise directly) within three months from January 1, 1933, concerning the matrimonial cases handled in their Curia during the preceding three years, 1930–1932, and in each case the items mentioned above in (1) should be given.

(3) If any diocese has such a small number of priests that the local Ordinary cannot establish a matrimonial court which could efficiently conduct matrimonial trials, the local Ordinary should not hesitate to inform the Sacred Congregation of the Sacraments in order that the Holy See may temporarily at least transfer jurisdiction over the cases of the diocese to the Curia of another diocese of the same province or the same country.

(4) If a diocese or archdiocese has been appointed as a court of appeal, according to Canon 1594, § 3, and cannot handle the cases of appeal without great difficulties, the local Ordinary should designate another Curia (preferably that of an archdiocese) for the appeal, and the Holy See will confirm the choice if it is satisfied that the Curia chosen has facilities to handle the cases of appeal.

(5) The reports of matrimonial cases demanded by the present Instruction shall be examined by a special committee of consultors of the Sacred Congregation, and they shall suggest remedies for the proper conduct of matrimonial trials, and if necessary an Apostolic Visitor shall be appointed to visit the tribunals and inquire whether the tribunals do their duty properly in this important matter.

(6) The foregoing regulations should not be considered extreme in view of the very great importance of matrimonial trials, which must

be conducted with the greatest possible skill, solicitous care and diligent investigation lest the inviolable bond of marriage be exposed to danger. Moreover, the matrimonial cases must be finished within the time specified in Canon 1630 (S. C. of the Sacraments, July 1, 1932; *Acta Ap. Sedis*, XXIV, 272).

For the trial of marriage cases in diocesan tribunals, the Holy See has issued an Instruction in which are put together in logical order all the Canons from the various part of the Code (S. C. of the Sacraments, August 15, 1936; *Acta Ap. Sedis*, XXVIII, 313-361).

(78) Competency of Parties in Marriage Cases.

If special reasons occur why non-Catholics should be admitted as plaintiffs, recourse is to be had in each individual case to the Holy Office.

In every marriage case between a Catholic and a non-Catholic, baptized or unbaptized, which is in any way carried before the Holy See, the Holy Office exclusively is competent to decide the case, but the cases of persons mentioned in Canon 1557, § 1, n. 1 are reserved to the Supreme Pontiff (Holy Office, January 27, 1928; *Acta Ap. Sedis*, XX, 75).

Parties who are the cause of the impediment which invalidated their marriage cannot sue for declaration of nullity of the marriage. Impediments include also those improperly so-called, for example, vitiated consent, invalid form (cfr. Canons 1081–1103; Committee March 12, 1929; *Acta Ap. Sedis*, XXI, 171). The parties excluded from the position of plaintiff or petitioner may denounce their marriage to the Ordinary or the promoter of justice, and these may take up the case *ex officio* (Committee, February 17, 1930; *Acta Ap. Sedis*, XXII, 196).

Canon 1971, § 1, n. 1: (1) the party who has been subjected to force and fear in contracting marriage has the right to sue; (2) the party who was the culpable cause of either an impediment or of the nullity of a marriage has no right to sue; (3) if a party is the cause of an impediment for a good and lawful reason (*e.g.*, giving of consent under good and justified condition *sine qua non*), he does not lose the right to sue; (4) the promoter of justice acts in virtue of his office in the case of Canon 1971, § 2 (Committee, July 17, 1933; *Acta Ap. Sedis*, XXV, 345).

(79) Concerning Appeals in Marriage Cases.

(*a*) To reopen marriage cases after two uniform sentences new and weighty arguments or documents are required. The new arguments must be grave, but they need not be most grave (*gravissima*), as is plain from Canon 1786. It is not necessary that the reasons and documents are so evident as to entitle a person to rein-

statement in the former right in the face of an irrevocably adjudged sentence. Cfr. Canon 1905, § 2, n. 2 [Sacred Roman Rota (*in Causa Diœcesis Z*), May 19, 1921; *Acta Ap. Sedis,* XIII, 546].

(*b*) The rule which ordains that a sentence concerning the bond of marriage or the state of marriage does not become irrevocably adjudged (cfr. Canon 1903), does not apply when the bond of marriage has already been dissolved by death of one of the married parties. The reason is that the Code in this matter merely restates the former law, and therefore the Code must be interpreted according to the accepted interpretation of commentators on the former law (cfr. Canon 6). Now, the authors unanimously teach that a sentence in matrimonial cases cannot become irrevocably adjudged in those cases in which obedience to the sentence would foster sin, which could not be prevented by the consent of the parties [Sacred Roman Rota (*in Causa Ægypti*), June 20, 1922; *Acta Ap. Sedis,* XIV, 600].

Since Canon 1989 states that marriage cases never become absolutely final and unassailable, so that when new reasons are discovered the case may be reopened, the Holy See was asked whether the same marriage case can be tried again by another tribunal of the same grade (i.e., by another board of judges of the same diocesan court). The answer was that it cannot be tried again in the same grade by another tribunal (Committee, June 16, 1931; *Acta Ap. Sedis,* XXIII, 353).

(80) Concerning Marriage Cases Exempted from the Formalities of Canonical Trials.

Can the Ordinary with the omission of the formalities demanded by the Apostolic Constitution "Dei miseratione" of Pope Benedict XIV, November 3, 1741, pronounce a marriage null and void after consultation with the *defensor vinculi matrimonialis* without the necessity of a second sentence in the following cases:

(*a*) If two Catholics contracted a civil marriage in a place subject to the "Tametsi" of the Council of Trent, or in any place after the "Ne temere" Decree, and then obtained a civil divorce and desired to marry again in the Church, or having married again outside the Church ask that their marriage be validated;

(*b*) If a Catholic has married a non-Catholic in a non-Catholic church, has obtained a civil divorce, and then desires to marry a Catholic in the Catholic Church;

(*c*) If apostates from the Catholic Faith have married outside the Church, either before a civil magistrate or in a non-Catholic church, have obtained a civil divorce, and then return to the Catholic Church and desire to marry a Catholic in the Catholic Church? *Answer:* The

above cases do not require any judicial procedure nor the intervention of the *defensor vinculi*, but are to be decided by the Ordinary himself or by the pastor in consultation with the Ordinary (Committee, October 16, 1919; *Acta Ap. Sedis*, XI, 479).

The certainty of nullity in Canon 1990 may be established not only by authentic document but also by any other legitimate proof (Committee, June 16, 1931; *Acta Ap. Sedis*, XXIII, 353).

Cases of separation in Canon 1131, § 1, are to be decided by administrative procedure, unless the Ordinary *ex officio* or at request of the parties prescribes otherwise (Committee, June 25, 1932; *Acta Ap. Sedis*, XXIV, 284).

If two Protestants were married and later on divorced, and one of them wants to marry a Catholic, the Protestant can ask for a decision on the validity of his first marriage for reason of disparity of cult to ascertain his free state, that is, his right to marry again (Special answer to the Bishop of Harrisburg; *Ecclesiastical Review*, January, 1932, p. 72).

(81) Concerning the Procedure to Prove the Matrimonium Ratum Non Consummatum for the Purpose of Obtaining a Dispensation of the Marriage Bond from the Holy See.

The Code, in Canon 1119, declares that the non-consummated marriage of two baptized persons, or of a baptized and a non-baptized person, can be dissolved by dispensation of the Apostolic See. In order that the Apostolic See may grant the dispensation, two things must be proved: (*a*) that the marriage was never consummated, and (*b*) that there is a just reason for the concession of a dispensation. Though the Roman Pontiff alone has the power to grant this dispensation, nevertheless the Holy See usually commits to the local Ordinaries the drawing up of the process by which the non-consummation of the marriage and the reason for a dispensation are to be proved. Though the process is not strictly speaking a canonical trial, but rather a special favor granted to the petitioner who requests a dispensation from the marriage bond, nevertheless the judge must proceed with the same diligence as though it were a canonical trial, and his decrees and orders have the same force as in a canonical trial. Moreover, the judge, witnesses and parties must keep in mind that it is absolutely essential that the truth is ascertained, for, if the marriage was actually consummated and the truth was not discovered either through the fault or indifference of the court, or through the fraud or neglect of the witnesses and parties, the dispensation of the Supreme Pontiff would be null and void through the lack of its foundation. In order that the entire procedure may be clearly known, the

Holy See publishes a detailed instruction on every phase of the investigation usually committed to the local Ordinaries.

The Sacred Congregation of the Sacraments alone has the right to pass judgment on the non-consummation of the marriage and on the existence of a just reason for the dispensation (cfr. Canon 249, § 3, and Canon 1962). No inferior judge can institute the process in cases of dispensation from the bond of the *matrimonium ratum non consummatum,* unless the Apostolic See has granted that faculty to him. If, however, a competent judge has by his own authority conducted the trial on the nullity of marriage for reason of impotency, and in the course of the procedure proof is obtained of the non-consummation of the marriage instead of impotency, he shall forward all the acts together with the petition for the dispensation submitted by one or both parties to the Sacred Congregation of the Sacraments, which Congregation may make use of the acts to pass judgment on the *matrimonium ratum non consummatum.* If the proofs contained in the above acts are not considered sufficient to establish the non-consummation of the marriage in accordance with the rules given in this Decree, the proofs should be completed and then forwarded to this Sacred Congregation.

If in a trial, in the first or second instance, on the nullity of marriage for reasons other than impotency (e.g., defect of consent, force and fear, etc.), the nullity of the marriage cannot be proved, but incidentally a very probable doubt arises that the marriage was never consummated, one or both parties may address a petition to the Roman Pontiff for a dispensation from the *matrimonium ratum non consummatum.* The judge in these cases is granted faculty to proceed with the proof of the non-consummation of the marriage according to the rules of this Decree, without first requesting the Sacred Congregation for permission to institute the procedure.

The married parties exclusively have the right to ask for the dispensation of the non-consummated marriage (Canon 1973). On account of the exceptional nature of the process, which is governed by the rules here laid down, it is appropriate that the married party who asks for the dispensation be not called by the name of "plaintiff" but rather of "petitioner," and the other party, if he does not join in the petition, shall be known as the "party convened" (*pars conventa*). The petition, which is always to be addressed to the Roman Pontiff and to be sent to the Sacred Congregation of the Sacraments, shall contain a complete and accurate statement of the facts of the case and all the reasons which may be helpful towards the obtaining of the requested dispensation; day, month and year and the diocese in which the petitioner or petitioners live, shall be noted down in the petition.

Care must be taken that the petition contains a genuine narration of the facts, written, if possible, by the petitioner himself and signed by him.

Though every Catholic is free to send the petition to the Holy See, it is preferable and also to be advised that the petition be forwarded through the proper Ordinary, who must add his own report. The proper Ordinary is the Ordinary of the place where the marriage was contracted or in which the petitioner has a domicile or quasi-domicile; in the case of a petition of a married party who is illegitimately separated from his or her spouse, the proper Ordinary is the Ordinary of the place where the "party convened"—if he or she be Catholic—has a domicile or quasi-domicile. The petitioner may, however, have recourse to the local Ordinary of his or her actual habitation, who can accept and recommend the petition to the Sacred Congregation, especially when several witnesses who are to be examined live in his diocese.

In order that the Ordinary may add his own report with sufficient knowledge of the facts, he may make investigation concerning the facts and persons, but he cannot have a judicial inquisition properly so called, with the questioning of the parties and witnesses in the form of a judicial process.

If it happens that the petition is made by a non-Catholic party, the Ordinary shall likewise forward the petition to this Sacred Congregation, adding necessary and timely explanations in reference to the foundation for the petition, the personal qualities of the petitioner, and other circumstances affecting the case.

After he has obtained sufficient knowledge of the facts and the persons, the Ordinary shall endeavor to reconcile the parties so as not to break the conjugal relations, using prudence and pastoral charity and arguments which seem most effective in the case, unless the circumstances of facts and persons clearly prove that such an experiment would be utterly useless. The Ordinaries shall employ the coöperation of the pastors, and the pastors themselves, when they first hear of the discord or difficulties of married persons, shall of their own accord use all the means which prudence and charity suggest to prevent the breaking of the conjugal relations.

If, from the petition of the party or from the process of the case which has commenced, or from other investigations which the Ordinary is to make before forwarding the petition, it is ascertained that the married couple have absolutely avoided the consummation of the marriage through the detestable crime of onanism, the petitioner—or both married parties, if both join in the petition—must be told that the case cannot be begun, or, if begun, cannot proceed further. If the peti-

tioner asserts that he had no share whatsoever in the crime, or if he states he has not been without fault but proves that matters have now come to such a climax that it is impossible to enter in conjugal relations, and if he is sincerely sorry for his deed and seriously promises that in another marriage—if it will be permitted to him—he shall not indulge in the crime of onanism, the judge shall refer the matter to the Sacred Congregation.

If, after receipt of the petition, the Sacred Congregation judges that the petition should be granted, it usually issues letters of delegation for the conducting of the case to the Ordinary who recommended the petitioner, and the Ordinary must conduct the case according to the rules of this Decree and the instructions which the Sacred Congregation may deem appropriate in the case.

After these preliminary regulations, the Sacred Congregation treats of the rules concerning the constitution of the tribunal and the entire course of procedure prior to the forwarding of the acts to the Sacred Congregation (Chapters III–XIV of the Decree).

Finally (in Chapter XV), it speaks of the Papal Rescript granting the dispensation, which is granted directly by the Roman Pontiff himself *in forma gratiosa,* and which is to be subscribed by the Cardinal Prefect of the Sacred Congregation of the Sacraments, or by a Cardinal who takes his place, and by the Secretary or Sub-secretary of the same Sacred Congregation. In view of the form in which the Rescript is issued, it has effect from the moment at which the Roman Pontiff in audience with the Secretary of the Sacred Congregation grants the dispensation, provided that the petition is true at that moment with regard to the non-consummation of marriage and the reasons for the dispensation (cfr. Canon 41). If the petition is no longer true in one or the other particular, the Rescript is entirely worthless for the petitioner because of the statement of a falsehood or the concealment of the truth.

In the Rescript of dispensation from the bond of non-consummated marriage is contained, though not expressed, another dispensation—namely, from the impediment of adultery with the promise or the attempt of marriage, if such a dispensation should be necessary (cfr. Canon 1053). After the expenses have been paid, the Rescript of dispensation is handed or sent to the party who made the petition, and it must be exhibited to the Ordinary (cfr. Canon 51), but the Sacred Congregation shall officially inform the Ordinary of the grant of the dispensation by mailing to him an authenticated copy of the Rescript. The Ordinary, who has been informed of the dispensation by authentic document, shall order the pastor of the place where the now dissolved marriage was contracted and the pastor of the place

where the parties were baptized to enter the dispensation in the marriage and in the baptismal records (Sacred Congregation of the Sacraments, May 7, 1923; *Acta Ap. Sedis,* XV, 389 sqq.).

Rules have been published to prevent deceitful substitution of the parties and of witnesses and to establish their identity beyond a reasonable doubt in the canonical process of non-consummated marriage (S. Congregation of the Sacraments, March 27, 1929; *Acta Ap. Sedis,* XXI, 490–493).

(82) Concerning the Time Allowed for Recourse Against Decree of Removal of a Pastor.

Canon 2146 states that there is but one remedy against the final decree of removal of a pastor from his parish (namely, recourse to the Apostolic See). That the recourse must be taken within ten days from the time of receiving notification of the decree of removal, and the days are to be counted according to the rule of Canon 34, n. 3, and Canon 35 (i.e., the first day does not count and the ten days expire with the end of the tenth day, not counting the first day). The time is *tempus utile.* The Ordinary must be informed by the pastor who takes recourse that he has done so [Sacred Congregation of the Council (*in Causa Romana et aliarum*), January 12, 1924; *Acta Ap. Sedis,* XVI, 162].

(83) Concerning the Invitation to a Pastor to Resign His Parish.

Does it suffice for the effect of removal to issue a public invitation to resign by the public posting of the edict or by publication in a paper or magazine, just as Canon 1720 permits a public summons to court, if the pastor has disappeared and conceals his place of sojourn with the intention of preventing the invitation from reaching him? *Answer:* Canon 2143, § 3, makes provision for that emergency, stating that he who prevents an admonition from reaching him is considered admonished (Committee, November 24, 1920; *Acta Ap. Sedis,* XII, 577).

(83a) Grave Fear as an Excuse from Penalties.

The grave fear mentioned in Canon 2229, § 3, n. 3, excuses from *ipso facto* penalties of the Code even if the offense was intrinsically evil and gravely sinful, provided it does not turn into contempt of the faith or ecclesiastical authority or the public harm of souls (Pontifical Committee, December 30, 1937; *Acta Ap. Sedis,* XXX, 73).

(84) Concerning the Effect of a Canonical Precept with Threat of Penalty.

In accordance with Canon 2233, § 2, after the violation of a precept to which a censure *ferendæ sententiæ* is attached, can the penalty be pronounced against the transgressor immediately after the offense has been proved, or must a new admonition be given to him before the censure can be pronounced? *Answer:* The censure can immediately be pronounced against him (Committee, July 14, 1922; *Acta Ap. Sedis,* XIV, 530).

(85) Concerning the Recourse to the Apostolic See After Absolution from Certain Censures in Danger of Death.

Canon 2252 states that, if a priest without special faculties has absolved a dangerously sick person from censures reserved in a most special manner to the Apostolic See and the penitent recovers, recourse is to be made by the confessor to the Sacred Penitentiary or to the bishop or to another who has the faculty to absolve from those censures. The question is whether Canon 2252 is to be understood in such a sense that recourse may always be made to the bishop, or only in case the bishop has faculty to absolve from those censures? *Answer:* Recourse to the bishop may be made only if he either by law or by special Indult of the Holy See has faculty to absolve from the censures reserved in a most special manner to the Holy See (Committee, November 12, 1922; *Acta Ap. Sedis,* XIV, 663).

(86) Concerning Recourse to Civil Authorities to Impede Ecclesiastical Jurisdiction.

It does not suffice for the purpose of incurring the excommunication spoken of in Canon 2334, § 2, to have recourse to the civil authorities in order to impede the exercise of ecclesiastical jurisdiction; actual interference is necessary, but the attempt to obtain such interference is punishable according to Canon 2235 (Committee, July 25, 1926; *Acta Ap. Sedis,* XVIII, 393).

(87) Concerning the Forbidden Communication with Heretical Sects.

(*a*) Must the Instruction of the Sacred Congregation of the Holy Office, issued September 16, 1864, with reference to the participation of Catholics in a certain society established at London for the reunion of all Christians, be applied and observed by the faithful also with reference to their participation in any meetings, public conventions and private gatherings arranged by non-Catholics for

the purpose of uniting all organizations of Christians? *Answer:* Yes, and the above-mentioned Instruction, together with other letters of the Holy See to certain Anglican Puseyites, issued November 8, 1865, are again to be published in the official organ of the Holy See (Holy Office, July 2, 1919; *Acta Ap. Sedis,* XI, 309).

(*b*) Can the doctrines called theosophism be harmonized with the Catholic doctrine, and is it lawful to join theosophistic societies, be present at their conventions, and read their books, periodicals, newspapers and other writings? *Answer:* All these things are forbidden (Holy Office, July 16, 1919; *Acta Ap. Sedis,* XI, 317).

(88) Concerning Duels.

The combats of German Universities called "Mensuren" had been forbidden as duels in the strict sense of the term by the Sacred Congregation of the Council, August 9, 1890. In recent times a distinction began to be made by some Catholic authors between those combats which are fought with weapons apt to inflict a serious wound and those which ordinarily would cause only slight injury. The Sacred Congregation of the Council does not admit any distinction, but absolutely forbids the "Mensuren" under the penalties of Canon Law against duels (June 20, 1925; *Acta Ap. Sedis,* XVIII, 132–138).

(89) Publication of Divine Favors and of Offerings in Religious Magazines.

With ever increasing frequency there are published especially at the more renowned sanctuaries of the world religious magazines for the purpose of relating the things which happened at these shrines and to arouse the devotion of the people towards the Saints under whose patronage the magazines are published. Among the things related in the magazines there is, as a rule, an account of the favors and heavenly blessings which have been obtained by the faithful through invocation of these Saints, and frequently an account is given of the offerings which have been pledged by the people for the favors asked and obtained.

Though the purposes for which the magazines are published and the offerings collected be praiseworthy in themselves (namely, increase of devotion towards the Saints, building and beautifying the sacred edifices, founding of works of charity), nevertheless the manner in which not infrequently divine favors are said to have been received (namely, absurd stories without a sign of authenticity) cannot be approved, especially when one considers that in the stories the reception

of the divine favor is often so intimately connected with the offerings of money that the one seems to depend on the other. That manner of acting may very easily appear as filthy greed, and may at least give occasion for adverse criticism especially to those who are prejudiced against the Catholic religion.

In order to prevent these improprieties, the Sacred Congregation of the Council after consultation with the Sacred Congregation of the Religious published with the approval of the Holy Father the following regulations for local Ordinaries and major religious superiors:

(1) The precepts of Canons 1261 and 1386 should be diligently observed to curb abuses.

(2) These publications should be submitted before publication to ecclesiastical censorship according to the precept of Canon 1386. The Ordinaries and superiors should not give permission to publish the magazines, and this is a matter of conscience, unless the official censor, according to the precept of the Encyclical "Pascendi" of Pope Pius X, September 8, 1907, has given a favorable opinion, and that is to be given in writing for each individual issue. The censor shall see that the stories which go under the rubric of favors received possess such signs of credibility that, all things duly considered, they can merit faith and that moreover between the favor obtained and the alms offered there is not even the least suspicion of a connection.

(3) If the narration of favors does not agree with the foregoing rules, they shall not permit them to be published except under a generic indication of the favor received without any detail of the facts.

If these things are faithfully observed, the religious magazines will fulfill the purpose for which they are published, and there will be no reason to accuse them of anything that is contrary to Christian piety (Sacred Congregation of the Council, June 7, 1932; *Acta Ap. Sedis,* XXIV, 240).

(90) Decree Regarding Oriental Clerics Who Leave Their Patriarchate or Country.

The Holy See published a Decree on December 23, 1929, concerning Oriental clerics going to America or Australia for the spiritual care of people of their own Rite, and another Decree on January 2, 1930, concerning the same clerics going to these countries for a short time not for priestly work but for other reasons. These Decrees are to remain in force.

In a later Decree the Holy See made regulations concerning

Oriental clerics going away from their own patriarchate or country to stay in any other country. The regulations bind both the secular and religious clergy of the Oriental Church.

(1) They must obtain from their own Ordinary the *litteræ dimissoriales,* and through their Ordinary the *litteræ commendatitiæ* of the Sacred Congregation for the Oriental Church. The letters of the Sacred Congregation will indicate the place to which the priest is going and the length of time he is permitted to stay there.

(2) The priest is in all things relative subject to the discipline to the local Ordinary and must obey him. The bond of subjection to his own proper prelate or patriarch is not thereby affected.

(3) When he arrives in the diocese specified in the letter of the Sacred Congregation, he is not allowed to move into another diocese except for a reason approved by both the bishop of the first diocese and the bishop of the other diocese, and with the consent of both. If conditions are attached to his moving to another diocese, he is bound by them.

(4) After the lapse of time for which he had permission from the Sacred Congregation, he must return to his own diocese. If he stays longer without a reason, the Ordinary shall not permit him to say Mass, and shall report the matter to the Apostolic Nuncio or Delegate or to the Sacred Congregation.

(5) The priest is not allowed, even temporarily, to exercise the sacred ministry unless he was for that purpose admitted to the diocese, or unless he has orders from or the explicit consent of the local Ordinary.

(6) If the priest stays for more than one year for the purpose of the sacred ministry, he shall at the end of each year (the year to be reckoned from the date of the letter of the Sacred Congregation) send a report to the Sacred Congregation about the religious condition of the faithful whom he served and what he did for them in the sacred ministry. The report is to be submitted to the local Ordinary that he may approve it with his authority and signature, and append remarks concerning it. The Ordinary shall forward it to the Sacred Congregation.

(7) The priest shall be forbidden to take up collections and gather Mass stipends, as ordained in the Decree of this Sacred Congregation of January 7, 1930, about Oriental clerics taking up collections and Mass stipends outside Oriental countries and dioceses.

(8) In reference to the celebration of Holy Mass during his journey to the foreign country or the return to his own diocese or country, the rector of the church where an Oriental priest wishes to say Mass may, if he sees fit, allow him to celebrate Mass for a few times, pro-

vided the priest exhibits the rescript or letter from the Sacred Congregation spoken of under n. 1, and provided the rector marks on that document the date and church where he said Mass and puts his signature to it. If the priest stays longer than seems reasonable, the rector should notify the local Ordinary. The local Ordinary should not allow the priest to say Mass when he stays an unreasonably long time in a place on his journey, or goes travelling here and there, and the Ordinary should inform the Apostolic Nuncio or Delegate or the Sacred Congregation.

(9) The local Ordinaries are urgently requested by the Sacred Congregation to enforce fully this Decree if they have Oriental clerics in their diocese. The Oriental priests must immediately conform to these regulations; and if they have no rescript from the Sacred Congregation, they must ask for it, for otherwise they can no longer be allowed to say Mass outside their own country (Sacred Congregation for the Oriental Church, September 26, 1932; *Acta Ap. Sedis,* XXIV, 344).

The Holy See warns again that Oriental priests must not be allowed to say Mass and to collect Mass stipends and alms unless they have authentic letters from the Sacred Congregation for the Oriental Church. If this Sacred Congregation in some extraordinary case permits an Oriental priest to collect alms or Mass stipends, the bishops will be notified by the Sacred Congregation either directly or through the Apostolic Delegate of the permission granted (Sacred Congregation for the Oriental Church, July 20, 1937; *Acta Ap. Sedis,* XXIX, 342).

(91) Canons that Apply to Orientals.

The penalties of Canons 2320, 2343, § 1, 2367, 2369, apply to the whole Church, the Latin Rite as well as all Oriental Rites. In the internal forum the Sacred Penitentiary deals with these offenses, in the external forum the Holy Office (Holy Office, July 21, 1934; *Acta Ap. Sedis,* XXVI, 550).

(92) Concerning Absolution of One's Accomplice in Sins of Impurity.

The Holy See declares that Canon 2367, § 2, is to be understood in the sense that the priest is guilty of indirectly inducing his accomplice not to confess the mutual sin of impurity if he persuades his accomplice that the impure things they did are no sin or at least no mortal sin. If after this the penitent confesses to the accomplice priest but does not mention the sin of impurity they mutually committed, he by absolving the penitent incurs the penalties of Canon 2367, § 1 (Holy Office, November 16, 1934; *Acta Ap. Sedis,* XXVI, 634).

(93) Violation of Celibacy by Priests.

The absolution from the excommunication for attempted civil marriage by priests is reserved to the Sacred Penitentiary, if the priest cannot separate from the woman and they promise to abstain from all conjugal relations, and the priest asks to be absolved and admitted to lay communion. If the priest was absolved in danger of death and recovered, recourse must be had to the Sacred Penitentiary in the same manner as is prescribed in Canon 2252 for censures reserved to the Holy See in a most special manner (Sacred Penitentiary, April 18, 1936; *Acta Ap. Sedis*, XXVIII, 242). A further declaration states that the case of Canon 2388, § 1 (attempted marriage of priests), is absolutely reserved to the Sacred Penitentiary in case the priest cannot separate from the woman, and absolution cannot be given in such a case except in danger of death. After the first Decree (April 18, 1936), some theologians had expressed the opinion that the priest under those circumstances could be absolved in more urgent cases in virtue of Canon 2254. The Holy See declares that the priest who is not separated from the woman cannot be given the benefit of Canon 2254 (Sacred Penitentiary, May 4, 1937; *Acta. Ap. Sedis*, XXIX, 283).

APPENDIX IV

FACULTIES GRANTED BY THE SACRED CONSISTORIAL CONGREGATION AFTER THE PROMULGATION OF THE CODE (REVOKING FORMER FACULTIES) TO APOSTOLIC NUNTIOS, INTERNUNTIOS AND DELEGATES FOR THE PLACES OF THEIR JURISDICTION.

Chapter I

GENERAL FACULTIES

1. Faculty to visit either in person or through an ecclesiastic of tried virtue, prudence and learning, persons, places and things spoken of in Canons 344, 512, 1382—in particular cases, however, and by way of visitation—provided that the visitation seems necessary and urgent, that the Ordinary is unable or has neglected to hold the visitation, and that there is no time to have recourse to the Holy See.

2. Faculty to draw up either in person or through an ecclesiastic dignitary all acts or processes concerning the men who have been designated by the Holy See for the episcopal or archiepiscopal dignity, in accordance with the regulations passed for the individual nations.

3. Faculty to confer on properly qualified persons those benefices spoken of in Canon 1435, § 1, nn. 1, 3, observing the rules which have been or will be ordained by the Apostolic Datary.

4. Faculty to absolve in the forum of conscience as well as in the external forum, as the diversity of cases may require, from all censures reserved by law either in a simple or special manner to the Roman Pontiff, imposing penances, etc., as the law requires.

5. Faculty to dispense men already ordained—so that they may be permitted to say Mass and obtain or retain ecclesiastical benefices—from all irregularities arising from crime or defect, provided no scandal is caused by the dispensation and the man is capable of performing the sacred rites, excepting the irregularities of homicide and abortion spoken of in Canon 985, n. 4; if the irregularity was caused by the crime of heresy or schism, the cleric shall before receiving the dispensation make the abjuration in the hands of the one who absolves him.

6. Faculty to grant for reason of poverty to those who omitted

the application of Mass due from foundations or from manual stipends permission to supply the Masses omitted in the past gradually, so that they, in so far as they are able, make complete satisfaction by saying, or having others say a few Masses each month. The number of Masses to be supplied is to be equitably determined by the Apostolic Nuntio, Delegate, etc., himself, if the matter is public; by the confessor, if the matter is occult. The men guilty of such omissions are, moreover, to be informed that, if they obey the orders given them in the matter, and have not fully supplied the omissions when death approaches, and have no means to arrange for the saying of the Masses by others, the obligation is condoned and the Holy See will supply the Masses from the treasury of the Church. Faculty is also granted, if it seems expedient in some case for reason of very special circumstances, to reduce the Mass obligations assumed in the past to a certain number, imposing as many Masses as the petitioner is able to satisfy, provided he has not previously neglected Mass obligations and obtained a reduction; the Holy Father supplies the Masses omitted from the treasury of the Church.

7. Faculty to arrange a discreet settlement in the internal forum with those who hold an ecclesiastical benefice—even one to which the care of souls is attached—and have neglected to say the divine office, and therefore forfeited the right to the revenue of their benefice in proportion to their omissions (cfr. Canon 1475, § 2). The portion of the income of the benefice which in the settlement is to be surrendered by the holder of the benefice, is to be applied to pious works at the discretion of the Apostolic See. If the holders of benefices are so poor that a settlement for partial restitution of the forfeited income cannot be demanded, the Apostolic Nuntio, Delegate, etc., has power to condone it, but the obligation of almsgiving in proportion to the financial ability of the delinquent is to be imposed either by the Apostolic Nuntio (Delegate, etc.) or by the confessor. If others have a right to the forfeited portion of the income, these rights are not to be infringed by the settlement or condonation.

8. Faculty to condone in the internal forum the illegally acquired income of a benefice, acquisition of which itself was invalid through real simony (*simonia realis*); an appropriate salutary penance is to be imposed, together with alms according to the delinquent's means, and orders are to be given him to relinquish the benefice. If, however, there are just and reasonable causes making the relinquishment of the benefice inadvisable (especially when there is question of a parish and there are no qualified men to whom the parish can be entrusted), the Apostolic Nuntio, Delegate, etc., can validate the title to the benefice.

9. The faculty to absolve either in person or through other capable

ecclesiastics persons who hold lands which were many years ago taken from the Church by the civil laws, and which they acquired by inheritance from their ancestors, or by purchase or other similar contract with former possessors of these lands; to entitle such persons to hold the property lawfully as their own and to dispose of it either by contract or by last will, imposing upon them for once only an appropriate alms of an amount to be determined at the discretion of the one absolving them and to be expended in favor of some church or pious work.

10. To dispense from the law of abstinence in particular cases on days when abstinence is prescribed, even on fast days and during Lent.

11. To allow clerics and religious, as individuals, for a reasonable cause the private anticipation of Matins and Lauds immediately after twelve o'clock noon any time during the year.

12. To commute, because of poor eyesight or other reasonable cause and for as long as the cause lasts, the obligation to recite the Divine Office into the daily recitation of the entire Rosary of the Blessed Virgin or other appropriate pious prayers, without however releasing the one who obtained the commutation from being present in choir if he has that obligation.

13. To dispense in urgent cases from the academic degrees necessary for the obtaining of certain benefices, which, by the charter of its foundation, require that the holder of the benefice have certain academic degrees, provided no prejudice to the rights of others is caused thereby.

14. To grant, in accordance with the rules of the Constitution "Officiorum ac Munerum," the faculty to keep and read forbidden books and periodicals, under the clauses and limitations which seem necessary or useful in the individual cases, and which ought to be those which the Holy Office employs.

15. To commute or to dispense, considering the merits of the cases, all simple private vows, even those reserved to the Apostolic See, with the exception of those vows in which the rights of third parties would be injured by the dispensation.

16. To dispense for a just cause from every oath, provided the rights of third parties are not injured thereby.

17. To remit or condone to the poor in the forum of conscience only some part or portion of goods illegitimately taken away or retained, whenever the owners are uncertain and the cases occult; however, the rest of the goods, if any remain in the hands of the evil doers, or otherwise some other sum to be fixed in proportion to the ability to pay, shall be distributed among the poor of the place or among the pious works of the place, if this procedure is feasible.

18. To receive—or to delegate in individual cases another qualified ecclesiastic to receive—the denunciations concerning the crime of solicitation, observing in all things the form and tenor of the Instruction to be given by the Holy Office.

19. To prolong for a short space of time the faculties, indulgences and indults granted by the Holy See, which have expired without the petition for their extension having been duly sent to Holy See. The use of this faculty entails the obligation of having immediate recourse to the Holy See for the favor, or, if the petition has already been made, to petition an answer.

Chapter II

FACULTIES CONCERNING INDULGENCES

20. To grant six times a year, on the occasion of some solemnity, a plenary indulgence to all the faithful who are truly contrite and have confessed and received Holy Communion, have visited a church or public oratory, and prayed there for some time for the Intentions of the Supreme Pontiff. The faithful who live in places where it is impossible or very difficult to go to Confession may be permitted to gain the aforesaid indulgences by substituting for the actual reception of the Sacraments some work of piety and firmly proposing with a contrite heart to confess the sins committed as soon as they can.

21. To grant three times a year on days to be determined by them, but not in the same place, the Papal Blessing according to the printed form inserted in these faculties, with a plenary indulgence to be gained by those who have with truly contrite hearts confessed their sins, received Holy Communion, assisted at the Blessing, and prayed for the propagation of the faith and the exaltation of the Holy Roman Church.

22. To grant a plenary indulgence, not perpetually but for a length of time to be fixed at their discretion, to all the faithful who with truly contrite hearts confess their sins and receive Holy Communion during the Forty Hours' Devotion, whenever this devotion is ordered to be held by the respective local Ordinaries, though for a good reason the formalities and ceremonies demanded by the Clementine Instruction for the conduct of the Forty Hours' are not observed in some points.

23. To grant a plenary indulgence to be gained in the act of their conversion (i.e., their reception into the Catholic Church) to converts who return to the Catholic Church from heresy. The faculty says "primo conversis" (i.e., persons who never were Catholics).

24. To grant in particular cases or temporarily a plenary in-

dulgence on the occasion of a sacred mission, observing the customary rules (i.e., Confession, Holy Communion, visit to a church, and prayer for the intentions of the Holy Father).

25. To declare one altar in every church of the territory of their jurisdiction privileged every day of the year, in accordance with the precept of Canon 916.

26. To grant during the term of their office two hundred days' indulgence to all present at the sacred functions conducted by them.

27. To erect the Stations of the Way of the Cross and attach the indulgences to them, and to establish the pious Sodalities of the Rosary, of Our Lady of Mount Carmel and the Seven Dolors, with the power to grant this faculty at their discretion to ecclesiastics for use in places where there are no houses of religious who by Apostolic concession have the privilege to bless the Stations or establish the confraternities or sodalities. Under the same condition, they have power to grant to ecclesiastics the faculty to bless and impose the scapulars of the aforesaid sodalities.

28. To grant that the indulgences spoken of in the preceding articles may be applicable also to the poor souls in purgatory by way of suffrage.

Chapter III

FACULTIES CONCERNING MARRIAGE

29. To dispense with the impedient impediments spoken of in Chapter III, Title VII, Book III of the Code, provided the precepts therein contained are observed to the letter, especially with reference to dispensations from mixed religion, and the Holy Office is informed each year before Easter of the number and other circumstances of the dispensations from mixed religion granted during the past year.

30. To dispense for . . . (the number of cases is not given in the general formula) for a grave reason from all diriment impediments of ecclesiastical law, either public or occult, of minor or major degree, with the exception of those arising from affinity in the direct line by consummated marriage, and those from sacred orders and solemn religious profession.

As to the diriment impediment of disparity of cult, it shall not be lawful to grant a dispensation except under the conditions laid down in Canons 1060–1064, and, in the case of marriages of Catholics with Hebrews and Mohammedans, it must be certain that the unbaptized party is free to marry, and the danger of polygamous marriage is avoided, that there is no danger of the circumcision of the children, and that, if a civil ceremony has to be performed (because the laws

of the country demand it), it will be merely a civil ceremony without the invocation of Mohammed or other kinds of superstition.

The couple to be married should, if possible, make an offering according to their means, which the Apostolic Delegate himself shall forward to the Holy Office, if there is question of the disparity of cult, or to the Sacred Congregation of the Sacraments, if there is question of other impediments.

31. To grant the *sanatio in radice* for . . . cases (the number of cases is not given in the general formula) for marriages contracted invalidly for reason of a diriment impediment, spoken of in No. 30 of these faculties, whenever it is morally speaking impossible to make the renewal of consent in the ordinary way; the party who knows of the impediment is to be informed of the effect of the *sanatio.* The rescript of the *sanatio* is to be carefully preserved in the episcopal Curia in order that at any time and in any event the validity of the marriage and the legitimation of the offspring can be proved.

However, if marriage was rendered invalid for lack of the prescribed form, the *sanatio* should not be granted except in the case in which the other party refuses to renew the consent in the prescribed form, or, if one were to ask the other party to renew the consent in the prescribed form great evil or danger would threaten the party making such request.

If marriage was invalid for lack of the prescribed form in marriages with a baptized non-Catholic or an unbaptized person, and the non-Catholic party cannot be induced to renew the consent according to the laws of the Church, the *sanatio* shall not be granted unless the Catholic party assumes the obligations to procure—as far as lies in his power—the conversion of the other party and to educate the offspring in the Catholic faith; the Catholic party is to be absolved from censures, if he contracted marriage before a non-Catholic minister and is to be reminded of the grave crime committed.

Chapter IV

FACULTIES CONCERNING OTHER SACRAMENTS AND SACRED RITES

32. To delegate simple priests of tried virtue and knowledge for the administration of the Sacrament of Confirmation in those regions only in which there are no bishops, observing the precepts of Canons 781, § 1, 782, § 4, 784; the delegation is to be given for some specified length of time.

33. To permit in each individual case or for a certain length of time one Low Mass in public oratories on Holy Thursday.

34. To permit the infirm priests during their illness, or in their old age, the privilege of the private oratory in which they may say Mass according to canonical regulations.

35. To permit the priests of the territory of their jurisdiction the use of artificial hair (wig) during the celebration of Mass, provided there is necessity for its use.

36. To concede in particular cases the indult to say Mass outside a church or oratory and for a reasonable cause to erect an altar in the open air, in accordance with Canon 822, § 4.

37. To permit priests making a voyage either on the ocean or on rivers to say Mass on the boat on a portable altar, provided the place in which Holy Mass is celebrated is not unbecoming or improper, and there is no danger of spilling the Precious Blood.

38. To reconsecrate either in person or through simple priests delegated by him fixed as well as portable altars which, for reason of some defect, have lost their original consecration, with the obligation to observe in all points the Instruction of the Sacred Congregation of Rites in reference to the sacred rites prescribed in the shorter form of reconsecration of altars.

39. To permit for a reasonable cause in particular cases or temporarily the saying of Mass after three o'clock in the morning.

40. To permit temporarily Requiem Masses to be said twice or three times a week in some church, with the consent of the Ordinary, on feasts of the rank of doubles, with the exception of doubles of the first and second class, Sundays and other feasts of precept, and privileged ferias, vigils and octaves.

41. To grant to priests of both secular and the religious clergy who suffer from weakness of eyesight, or from other infirmity, faculty to say the Votive Mass of the Blessed Virgin or of the Dead, obliging them to employ, if necessary, the assistance of another priest, and provided that, if they are pastors, they attend to the obligation of explaining the Gospel to the people on Sundays and holydays of obligation. Furthermore, to concede to priests who are entirely blind the faculty to say Mass, obliging them in every case to employ the assistance of another priest or deacon, and provided an experiment has been made to ascertain whether they can say Mass, and the priests have demonstrated their ability.

42. To grant to persons sick in bed without expectation of early recovery permission to receive before the expiration of one month of sickness Holy Communion once a week without keeping the Eucharistic fast—i.e., after having taken medicine or some liquid food (cfr. Canon 858, § 2). To grant to the sick who are not confined to bed but who suffer from an illness which, in the judgment of the physician, does not allow them to keep the fast without danger, permission to

receive Holy Communion once a week without observing the Eucharistic fast, as said above.

43. To permit in individual cases that in churches in which the feast of some Saint mentioned in the Roman Martyrology or otherwise approved by the Holy See is solemnly celebrated, High Masses and Low Masses may be celebrated differing from the Office of the Day, provided the Office of the Day is not a double or a Sunday of the first and second class, or the Vigil of Christmas, or the Vigil of Pentecost, or the Octave Day of Christmas, the Epiphany or Corpus Christi, or Ash Wednesday, or any day of Holy Week.

44. To delegate to any priest in places subject to their jurisdiction in particular cases or temporarily the faculty to consecrate according to the formula of the *Pontificale Romanum* chalices, patens and altar-stones, using for this purpose the holy oils blessed by a Catholic bishop.

45. To bless church bells and consecrate churches provided they have advised the local Ordinary of the impending ceremony and he has not objected.

Chapter V

FACULTIES CONCERNING RELIGIOUS

46. To take cognizance in extraordinary cases and in cases of urgent necessity of the state of some house of any religious organization; to lend their counsel and coöperation to superiors for the purpose of applying appropriate remedies to abuses and making the religious return to the perfection of their state, but they must as soon as possible inform the Apostolic See, if they deem it necessary to decree something new for the utility of cloistered communities.

47. To dispense for a just cause and at the request of the community from the lack of the dowry required for Sisters or nuns.

48. To concede in particular cases or temporarily faculty to the diocesan Ordinaries to place religious in charge of parishes, if secular priests are wanting, but this is to be done with the consent of the superiors of the religious and under the condition that at least two other religious live with the pastor; in all other points the laws of the Sacred Canons are to be observed.

49. To permit nuns in case of sickness and for other just reasons to remain outside the enclosure for a length of time to be specified by them; however, the nuns must be always accompanied and assisted by their blood relations or relations by marriage (*affines*) or some honorable woman, must lead a religious life in the (private) house or elsewhere, and keep aloof from associations with men, as behooves

virgins consecrated to God. The precepts of Canon 639 apply in this case.

50. To dispense religious of either sex in the forum of conscience only from returning to the religious organization and to permit them to remain in the world, whenever they have obtained an invalid declaration of nullity of their vows, provided the nullity is occult; however, the vow of perpetual chastity remains, and the other vows are to be observed as to their essentials, until they have obtained a special dispensation from the Holy See in the matter. If those religious are priests, they must be ordered to wear the garb of the secular priests.

Chapter VI

FACULTIES FOR PERSONAL USE BY THE NUNCIOS OR DELEGATE

51. To recite the Divine Office and to celebrate Mass according to the Roman Calendar of the clergy of the City of Rome, and to concede that faculty to the priests living with and subject to them.

52. To reserve the Blessed Sacrament in the oratory of their permanent residences under condition that a lamp burns continually before the tabernacle, that the key of this tabernacle is carefully guarded, and the other regulations of the Sacred Liturgy are perfectly observed. The oratory shall, by concession of the Roman Pontiff, be considered a public oratory.

53. To administer the Sacrament of Confirmation in the whole district of their jurisdiction and also on the ocean on their voyage to and on return from the place of their jurisdiction.

54. To hear sacramental confessions of all the faithful in the place of their jurisdiction and on the ocean trips spoken of in the preceding paragraph.

55. To gain for themselves the indulgences which, in virtue of their faculties, they desire to grant to others.

Note: The above faculties contained in Chapters II and III and those enumerated in Chapter I, nn. 1, 3 and 18, Chapter IV, nn. 32 and 38, Chapter V, n. 46, Chapter VI, nn. 53, 54 and 55, are conceded to those only who have episcopal consecration, and are therefore not to be considered granted to those (especially the Auditor and Secretary) who, during the vacancy of a Nunciature or a Delegation, are entrusted with the conduct of the business, unless this is explicitly stated, even though the commission to attend to the office is given to them with the ordinary faculties.

The representative of the Supreme Pontiff shall be careful not to

grant those indults which he can concede temporarily for more than five or ten years.

Additional Faculties

(1) During the vacancy of a diocese within the territory of the Apostolic Delegate, he may at the request of the administrator of the diocese concede all those things which the bishop can do by his ordinary jurisdiction.

(2) Whenever there is urgent necessity and evident advantage and there is danger in delay, he may permit the alienation of ecclesiastical goods or pious causes to the value of sixty thousand francs for European countries, up to one hundred thousand francs for countries outside of Europe.

(3) To permit illegitimates to enter the seminary, provided there is no question of adulterous or sacrilegious offspring, and that they have the other necessary qualifications to enter the seminary. The obligation remains to have recourse to the Holy See for their ordination.

(4) In places where for lack of pastors or because of too great distances the faithful are attended to by missionaries, the Apostolic Delegate may appoint the superior of the mission as pastor, the other missionaries as assistants in order that the pastor and the assistants may exercise for the benefit of the faithful resident in those places or travelling in that mission all functions which pastors and assistants exercise in their own parishes.

He may, moreover, grant the superior of the mission for his territory the faculties which vicars general possess and which are enumerated in Canons 1043–1057 of the Code and which are there given to the Ordinaries for marriages. Furthermore, he may grant power to confirm according to n. 32 of his (the Delegate's) Faculties.

The superior of the mission shall inform the local Ordinary of the powers granted to him by the Apostolic Delegate and request him to designate in so far as it can be done the limits of the mission. After the completion of his mission, the superior shall give to the Ordinary a report of the sacraments administered in the mission in the same manner as the pastor is bound to do for his parish.

Finally, the Apostolic Delegate may in particular cases subdelegate these faculties to the bishops of the territory of his Delegation (June 16, 1920; *Monitore Ecclesiastico*, 1922, 200).

(5) By Decree of the Sacred Congregation for the Oriental Church, December 6, 1928, the Apostolic Delegates are authorized to permit the transition from the Latin to an Oriental Rite, and vice versa, to the Catholic laity, not however to the priests (*Acta Ap. Sedis*, XX, 416).

(6) The Apostolic Delegate to the United States was authorized by rescript, first granted June 20, 1924, for five years, and renewed for another five years, November 13, 1929, to reduce the Masses *pro populo* in poor parishes to those Masses enumerated in Canon 306 (*Ecclesiastical Review*, September, 1932, p. 302).

APPENDIX V

FORMULA OF FACULTIES ISSUED TO THE INDIVIDUAL BISHOPS IN THE UNITED STATES AND OTHER COUNTRIES. FORMULA IV.

I. Faculties from the Sacred Congregation of the Holy Office

1. To grant for not more than three years permission to read, and keep under custody that they may not fall into the hands of others, forbidden books and periodicals with the exception of those which *ex professo* defend heresy or schism, or endeavor to destroy the very foundations of religion, or works which *ex professo* treat of obscene matters. The permission may be granted to the individual faithful subject to him but with discretion and for a just and reasonable cause (cfr. Canon 1402, § 2), to those namely who truly need to read these books and periodicals either to oppose them, or to be able to attend to their legitimate business, or to follow a legitimate course of studies.

Note.—This faculty is granted to the bishops to be made use of in person (that is to say, without delegating it to anyone), and their conscience is burdened with the grave obligation to see that in each case the above-mentioned conditions are really present.

2. To dispense for just and grave reasons his subjects, even while they are outside the territory of his diocese, and non-subjects while they are in his diocese, from the impediment of mixed religion, and if necessary, also from disparity of cult *ad cautelam* whenever there is a prudent doubt concerning the reception of Baptism by the non-Catholic party, when the non-Catholic cannot before marriage be induced to embrace the true Faith, or the Catholic party cannot be dissuaded from the marriage. The faculty is granted under the proviso that, prior to the dispensation, the promises spoken of in Canon 1061, § 2, are regularly made, and the Ordinary himself is morally certain that the promises will be kept. These promises are: on the part of the non-Catholic, to remove from the Catholic party danger of perversion (i.e., neglect of his religious duties and loss of Faith), and on the part of both parties that they absolutely promise to baptize and educate all children, male and female, in the Catholic religion. The Catholic party shall, moreover, be informed of the obligation he (or she) has to work prudently for the conversion of the non-Catholic party to the Catholic Faith.

The parties should be warned that they are forbidden to approach a non-Catholic minister, either before or after the marriage before the Church, to give or renew their consent, as forbidden by Canon 1063, § 1, under penalty of *latæ sententiæ* excommunication reserved to the Ordinary for the Catholic party, in accordance with Canon 2319; if the pastor knows with certainty that the parties will violate, or have already violated this law (cfr. Canon 1063), he shall not assist at their marriage until he has consulted the Ordinary.

If the parties actually live in concubinage, appropriate means should be employed to remove scandal if it exists, and the Catholic party should be properly disposed to receive the grace of God, and, if he perhaps attempted marriage before a non-Catholic minister, he should be absolved from the excommunication he has incurred, and appropriate salutary penances should be imposed on him.

3. To dispense for just and grave reasons his subjects even while they are outside his territory, and non-subjects while they are within his territory, from the *impediment of disparity of cult* (except in the case of marriage with a Jew or a Mohammedan), if it can be done without irreverence to the Creator, and the unbaptized party cannot before marriage be induced to embrace the true Faith or the Catholic cannot be dissuaded from the marriage. The faculty is granted with the proviso that, prior to the dispensation, the parties have regularly made the required promises, in accordance with Canon 1061, § 2, and that the Ordinary is morally certain that the promises will be kept. These promises are: on the part of the unbaptized party to remove from the Catholic party the danger of perversion, and on the part of both parties that all the children, male and female, shall be baptized and educated in the Catholic religion. The Catholic party shall, moreover, be informed of the obligation he (or she) has to work prudently for the conversion of the unbaptized party to the Catholic Faith.

The parties should be warned that they are forbidden to approach a minister of a false cult, either before or after the marriage before the Church, to give or renew the consent, as forbidden by Canon 1063, § 1. The precept of Canon 1063, § 2, concerning the course of action of the pastor in case of disobedience of the foregoing precept is to be strictly observed. With reference to the legitimation of the offspring, Canon 1051 is to be kept in mind.

If the parties actually live in concubinage, appropriate means are to be taken to remove the scandal, if there is any, and the Catholic party is to be properly disposed to receive the grace of God.

For the rest, regarding the publication of the banns, the interrogation concerning the consent, and the sacred rites (either in a mixed marriage or in one with disparity of cult), the precepts of Canons

1026, 1102 and 1109 are to be observed, and, after such marriages have been contracted, either in his own territory or in the territory of another Ordinary, the Ordinary shall see that the married parties faithfully keep the promises which they have made.

4. To validate marriages by the *sanatio in radice,* when marriage has been attempted before a civil magistrate or a non-Catholic minister by his subjects (even if they thus married outside his diocese), or by non-subjects if they attempted marriage in his diocese, with the impediment of mixed religion or disparity of cult. The faculty is granted with the proviso that the consent in both parties perseveres, and that the consent cannot be renewed in legal form, either because the non-Catholic party cannot be admonished concerning the invalidity of the marriage without danger of great harm or hardship for the Catholic party, or because the non-Catholic party cannot in any way be induced to renew the consent before the Church, or to make the promises prescribed by Canon 1061, § 2; with the exception (1) of the case in which the non-Catholic party is opposed to the Baptism or Catholic education of the children, both male and female, already born or to be born in future; (2) of the case in which the parties before the attempted marriage bound themselves either privately or by a public agreement not to raise the children spoken of in (1) in the Catholic Faith. The faculty is granted under the further proviso that the Ordinary may grant it then only when there is no other diriment impediment for which he has not the faculty to dispense or to grant a *sanatio.*

The Ordinary shall seriously impress on the Catholic party the very grievous offense committed, impose salutary penances on him, and if necessary absolve him from the excommunication, in accordance with Canon 2319, § 1, n. 1; and shall declare that, in virtue of the *sanatio* accepted by the said party, the marriage has become valid and legal and indissoluble by the divine law, and that the offspring which he has or shall have is legitimate. The Ordinary shall, moreover, remind the Catholic party of the obligation which he always has to procure, in so far as lies in his power, the baptism and education in the Catholic religion of all children, male and female, already born or to be born, and to work prudently for the conversion to the Catholic Faith of the non-Catholic spouse.

As it is necessary to have proof in the external forum of the validity of the marriage and the legitimation of offspring, the Ordinary shall command that in every case the document of the *sanatio,* together with the attestation of its execution, be carefully preserved in the local Curia, and he shall also order that the *sanatio* of the marriage be recorded in the baptismal record in the parish where the Catholic

party was baptized, with the day and year, unless the Ordinary thinks it advisable to omit this annotation.

The mind of the Sacred Congregation is that the bishop shall make use of this faculty in person (i.e., shall subdelegate nobody).

NOTE.—(1) In each case in which a dispensation or a *sanatio* is granted in virtue of the foregoing faculties, the bishop or Ordinary shall make explicit mention of the Apostolic delegation (Canon 1057).

(2) The Ordinary shall at the end of every year make a report to the Holy Office of the number and kind of dispensations granted in virtue of these faculties.

II. FROM THE SACRED CONGREGATION OF THE SACRAMENTS

1. To dispense for a just and reasonable cause with the impediments of marriage of lesser degree enumerated in Canon 1042, and also from the impedient impediments mentioned in Canon 1058, for the purpose only of contracting marriage.

2. To dispense for a grave and urgent cause, whenever there is danger in delay and marriage cannot be deferred until a dispensation from the Holy See is obtained, from the following impediments:

(*a*) consanguinity in the second or in the third degree mixed with the first, provided no scandal or surprise arises from permitting such a marriage;

(*b*) consanguinity in the second degree of the collateral line;

(*c*) affinity in the first degree of the collateral line either alone or mixed with the second degree;

(*d*) public propriety in the first degree, provided there be no doubt lest the spouse be the offspring of the other party to the present marriage.

3. To dispense on the occasion and in the act of the pastoral visitation or sacred missions, and not at any other time, from all matrimonial impediments mentioned in the preceding paragraphs in the case of those who are found living in concubinage.

4. To validate marriages by the *sanatio in radice* which were contracted invalidly for reason of one of the impediments of ecclesiastical laws of both minor and major degree, with the exception of the impediments arising from the sacred order of the priesthood and from affinity in the direct line arising by consummated marriage, if it would occasion great hardship to demand the renewal of consent of the party ignorant of the nullity of the marriage, provided the first marital consent perseveres and there is no danger of divorce. The party conscious of the impediment is to be instructed concerning the effect

of this *sanatio,* and annotation of the marriage is to be made in the baptism and marriage records.

NOTE.—(1) The Ordinary may make use of the above-mentioned faculties either in person or through other qualified ecclesiastical persons specially appointed for this purpose, and the faculties may be used in favor of marriages to be contracted and those contracted invalidly by his subjects even when they actually are outside his territory, and by non-subjects actually staying in his territory, and in every case explicit mention shall be made of the Apostolic delegation according to Canon 1057.

(2) In the use of the faculties the precepts of Canons 1048–1054 must be kept in mind.

(3) The Ordinary shall at the end of each year report to the Sacred Congregation of the Sacraments through the Sacred Consistorial Congregation the number and kind of dispensations he has granted in virtue of these faculties.

III. FACULTIES FROM THE SACRED CONGREGATION OF THE COUNCIL

1. To reduce, for five years, perpetual Mass obligations to such a number that the legitimately established stipend of the diocese may be received for every Mass, whenever the income or interest from the fund set aside for that purpose has been diminished, and there is nobody who by law is obliged and can effectively be forced to increase the Mass stipends. The diocesan Curia shall be notified annually of the celebration of the reduced number of Masses by each celebrant.

2. To transfer, for five years, within the territory of the diocese obligations of Masses to days, churches and altars other than those specified in the foundation of those Masses, provided that there is real necessity, and that divine worship is not thereby diminished, and that nothing is done to make it more inconvenient for the people to hear Mass. Masses ordered by legacies (to be said on certain days, at certain churches or altars) are not to be transferred, if they can easily be said in those places by increasing the stipend. The diocesan Curia is to be informed by each celebrant annually of the fulfillment of the transferred Masses.

3. To transfer, for five years, Mass obligations, which are too numerous to be said in the place where they are offered, to other places, even outside the diocese, provided that the greater number of Masses is said within the territory of the diocese, and that the precept of the Code of Canon Law regarding the safeguards to be taken in committing Mass obligations to others are faithfully observed.

4. To permit the anticipation of the private recitation of Matins

and Lauds from one o'clock in the afternoon, whenever there is a reasonable cause.

5. To permit the alienation of ecclesiastical goods to the sum of ten thousand dollars in the United States and in Canada; fifteen thousand pesos in South America and other countries. The permission can be granted only when necessity demands it, and when there is no time to have recourse to the Holy See, and the Holy See shall immediately be informed of the affair as soon as the alienation has been effected.

6. To dispense the faithful from fast and abstinence when a civil holiday falls on a day of fast or abstinence, or of both fast and abstinence (granted for five years by Decree of the S. C. Council, October 15, 1931).

IV. Faculties of the Sacred Congregation of Religious

1. To dispense from illegitimate birth as an impediment to joining a religious community, if the constitutions make illegitimacy an impediment, provided there is no question of the offspring from sacrilegious intercourse, and provided that the superior requests the dispensation and the one dispensed is not elected to the office of a major superior, in accordance with Canon 504.

2. To permit the celebration of three Holy Masses at midnight on Christmas in the churches of religious not comprehended in Canon 821, § 3, with the faculty to distribute Holy Communion to those present. The three Masses, however, must be said by one and the same priest.

3. To dispense persons who are too old to enter religious life, if a certain institute has an age limit in its constitutions. In each case the Mother General or Provincial is to be consulted, and the consent of such superiors and of their respective council is required, and the postulant must not be over forty years of age, and must possess all other qualifications demanded (by the general and the particular law).

4. To dispense: (*a*) from the lack of the canonical age required for ordination to the priesthood, provided, however, that the lack does not exceed twelve months. The Ordinary may use this faculty also for the benefit of exempt religious, provided they have received from their superiors the dismissorial letters, and the candidates have all other qualifications required by the sacred canons, and have especially completed the required course of theology in accordance with Canon 976, § 2; (*b*) from the lack of required age even when it is over twelve months but not beyond sixteen months, provided the candidates do not enjoy or stand in need of another Apostolic dispensation, and that the other conditions mentioned under (*a*) be observed.

5. To dispense from the partial or entire lack of the dowry in the case of women who wish to join a community of nuns or Sisters, provided that the financial condition of the institute does not suffer thereby, and that the postulants are endowed with such qualities that one can entertain the well-founded hope that they will be very useful to the institute.

6. To confirm the confessor for a fourth and fifth term of three years, provided that the majority of the religious women have given their consent by secret vote in a meeting called for that purpose, and that also those have been allowed to vote who in other affairs have no vote. For those who dissent and demand another confessor provision must be made accordingly.

7. To permit the celebration of Holy Mass on Holy Thursday and to allow the persons who live habitually in the community to receive Holy Communion and thus satisfy the obligation of the Easter Communion.

8. To permit nuns (Sisters with solemn vows) to enter the church (attached to their convent) to clean and decorate it. Before the nuns enter the church all others who do not belong to the cloistered community—even the confessor and the servants who live outside the convent—must have left it, the doors must be locked, and the key given to the superioress. One nun shall never be left alone in church, and there must be at least two. The door which opens from the convent into the church shall be locked with a double lock, the key of one being in the hands of the superioress, and that of the other in the hands of the nun appointed by the Ordinary. The door shall not be opened except in the aforesaid cases and under the prescribed precautions.

9. To permit nuns to go outside the enclosure when a surgical operation becomes necessary, even though there is no imminent danger of death or grievous consequences. The permission lasts only for the time strictly necessary, and the prescribed precautions must be taken.

V. Faculties from the Sacred Congregation of Rites

1. To delegate priests—if possible, men who are vested with an ecclesiastical dignity—to consecrate immovable and portable altars with the rite and form prescribed by the *Pontificale Romanum,* and, in the case of portable altars, also with the shorter form of the Roman Ritual.

2. To delegate priests—if possible men vested with an ecclesiastical dignity—to consecrate immovable and portable altars which have lost their consecration. In the cases of desecration spoken of in Canon 1200, § 2, Formula B is to be used; in the cases of desecration men-

tioned in Canon 1200, § 1, the faculty (to use the shorter form) is already given by the Canon, and Formula A is to be used (the Roman Ritual marks the two formulas I and II instead of A and B).

3. To delegate priests—if possible, men vested with an ecclesiastical dignity—to consecrate chalices and patens with the rite and form of the *Pontificale Romanum*.

4. On the days in Holy Week on which the Passion is read in Mass, to permit priests who by Apostolic indult say two Masses on one day to omit the Passion in one Mass, and read only the last part (*Altera autem die*), saying before this portion the *Munda cor meum, Sequentia S. Evangelii, etc.*

5. To bless marriages outside of Mass, or to recite over the married couple the prayers according to the approved formulas, with the faculty to subdelegate.

6. To bless and impose the five scapulars under one formula with power to subdelegate.

7. To make use of the foregoing faculty without the obligation of recourse to the Ordinaries or to the competent religious Congregations and without the obligation of registering the names in cases of great concourses of people at the time of retreats and missions, with the faculty to subdelegate.

8. To bless holy oils on Holy Thursday with that number of priests and sacred ministers which the bishop can have considering the circumstances, places and conditions. The faculty is given to the officiating bishop.

9. To permit the use of incense in High Masses said without deacon and subdeacon on doubles of the first and second class, Sundays, and in High Masses celebrated during the Exposition of the Blessed Sacrament and at the altar of exposition.

10. To permit the use of the *Memoriale Rituum* of Pope Benedict XIII in churches and public and semi-public oratories (non-parochial or quasi-parochial) for the sacred functions of the three last days of Holy Week, and in the blessing of ashes on Ash Wednesday and of candles and palms, provided the sacred functions are conducted with due decorum and reverence.

11. To bless religious objects with the sign of the cross and the observance of the rites prescribed by the Church. On the occasion of the pastoral visitation, when many persons ask to have diverse religious articles blessed which would have to be blessed with various formulas, the Ordinary may in these circumstances bless all the objects with this one short formula: "Benedicat hæc omnia Deus, Pater, et Filius et Spiritus Sanctus. Amen." This faculty is personal to the Ordinary.

12. To celebrate a low Mass of Requiem once a week in his own oratory, provided the day is not a double of the first or second class, a Sunday, holyday of obligation (even a suppressed one), a privileged octave, a feria of Lent, an Ember Day, Rogation Monday, a vigil or a feria on which the Mass of a Sunday, postponed or anticipated, is to be said.

VI. Faculties from the Sacred Penitentiary

To absolve all penitents (with the exception of heretics purposely spreading heresy among the faithful) from all censures and penalties of ecclesiastical law incurred through heresies committed either without anyone hearing or noticing them or manifested before others, after the penitent has made known and denounced, as prescribed in law, the teachers who professedly teach heresy (if he knows any), and ecclesiastical or religious persons who perhaps were his accomplices in heresy. And, if there are just reasons why he cannot make the said denunciation before his absolution, he may be absolved under the serious promise to make the denunciation as soon and as well as he can, and in every case he shall before being absolved abjure the heresies secretly before the one who absolves him. Salutary penances in proportion to his guilt shall be imposed on him with the obligation to receive the sacraments frequently and the duty to make retraction of his heresies before those persons before whom he manifested them and to repair the scandal which he gave.

2. To absolve from ecclesiastical censures and penalties those persons who have defended, knowingly read or kept in their possession books of apostates, heretics or schismatics, which defend apostasy, heresy or schism, or other books condemned by name by Letters Apostolic. Appropriate salutary penance shall be imposed on them, and they shall be obliged before receiving absolution, if possible, to destroy those books or give them to the Ordinary or to the confessor.

3. To absolve from censures those who have directly or indirectly impeded the exercise of ecclesiastical jurisdiction of either the internal or external forum by having recourse to any laical authorities for that purpose.

4. To absolve from ecclesiastical censures and penalties decreed against dueling in cases only which have not been brought before the external forum. A heavy penance is to be imposed, together with other conditions demanded in law.

5. To absolve from ecclesiastical censures and penalties those who have joined the Masonic sect and other associations of that kind which plot against the Church or the legitimate civil authorities. They can

be absolved under condition only that they separate themselves entirely from the respective sect or society and abjure it, that they, in accordance with Canon 2336, § 2, denounce ecclesiastical and religious persons whom they know to be members, and that they deliver to the one absolving them books, manuscript and insignia concerning the sect or society, if they have any in their possession; these are to be forwarded as soon as possible to the Holy Office, or at least—if just and grave reasons prevent their being forwarded—destroyed. A grave penalty in proportion to the gravity of guilt is to be imposed, together with the obligation to receive the sacraments frequently and the duty to repair the scandal.

6. To absolve from ecclesiastical censures and penalties those who have violated the enclosure of regulars or nuns by entering without legitimate permission, and those who ushered them in or admitted them, provided it was not done for any gravely sinful purpose, even though the sinful purpose was not accomplished, and provided that the matter has not been brought before the external forum. An appropriate penance proportioned to the gravity of the offense shall be imposed.

7. To dispense persons who in violation of the vow of perfect and perpetual chasity made privately after the completion of the eighteenth year of age contracted marriage, in order that they may be permitted to ask for the *debitum conjugale.* These penitents are to be informed that they are bound by the vow outside the proper use of marriage and if they should survive their partner.

8. To dispense from the occult impediment of crime, after marriage has been attempted, provided the impediment was incurred without mutual coöperation (cfr. Canon 1075, § 3). The parties who live in invalid marriage must be informed of the necessary secret renewal of consent, and a heavy and long penance shall be imposed on them.

To dispense with the occult impediment of crime before marriage has been attempted, provided there was no mutual coöperation in the crime. A heavy, long penance is to be imposed.

9. To dispense from irregularity caused by voluntary homicide or abortion spoken of in Canon 985, § 4, but for the purpose only that the penitent may exercise the orders already received without the danger of infamy or scandal. The penitent is to be obliged to have recourse, to the Sacred Penitentiary, within one month (by letter written either by someone else or by himself, without mentioning his name), explaining all the circumstances of the case and especially how often he committed the offense, and he is bound to obey the orders of the Sacred Penitentiary.

10. To grant, under the usual conditions:

(A) a plenary indulgence to be gained by the faithful who (*a*) once a year assist at a Mass celebrated by the Ordinary in Pontificals, the Ordinary announcing the day in the various places of his diocese; (*b*) devoutly visit a church or public or semi-public oratory while the Ordinary performs the canonical visitation; (*c*) visit the church at the time when the diocesan synod is held there; (*d*) receive Holy Communion at a General Communion once a year at the cathedral church or any other church appointed by the Ordinary; (*e*) at the time of a mission conducted in the diocese with permission of the Ordinary, if they hear at least one-half of the number of sermons preached;

(B) a partial indulgence of 200 days to be gained by those who assist at any of the sermons spoken of above under (*e*).

NOTE.—(1) The Ordinary may use the foregoing faculties to absolve from censures and to dispense in the internal forum, even outside of sacramental confession, in favor of his subjects even when either the Ordinary or the penitent or both are outside the diocese, and in favor of non-subjects within the limits of his territory. This is conceded to the Ordinary by special authority of the Apostolic See. Within the diocese only the Ordinary may grant these faculties even habitually, if he pleases, to the Canon Penitentiary and to vicars-forane but for the forum of conscience and in sacramental confession only. To other confessors, however, he may grant these faculties for particular cases only when they have recourse to him for their penitents, unless for reason of peculiar circumstances he sees fit to grant them generally to some confessors to be appointed especially by him for a length of time to be fixed at his discretion.

(2) The Ordinary cannot delegate the faculty to grant the above-mentioned indulgences but must make use of the power in person.

APPENDIX VI

INSTRUCTION ON THE DILIGENT CUSTODY OF THE HOLY EUCHARIST

The Holy See has never neglected to suggest safeguards and issue warnings regarding the diligent custody of the Most Holy Eucharist, and its preservation from all danger of profanation in churches where in accordance with the common law or by indult it is reserved. The precepts of canonical discipline which in the course of the ages the Holy See prescribed for this purpose are summarized to-day in Canon 1269 of the Code of Canon Law, which reads as follows:

§ 1. The Most Holy Eucharist shall be reserved in an immovable tabernacle placed in the middle of the altar.

§ 2. The tabernacle shall be well constructed, enclosed on all sides, decorated becomingly according to the norms of the liturgical laws, and so carefully guarded that all danger of sacrilegious profanation is obviated.

§ 3. For some grave reason approved by the Ordinary, it is not forbidden that the Most Holy Eucharist be reserved during the night outside the altar, but on a corporal, in some more secure and becoming place, the precept of Canon 1271 being observed.

§ 4. The key of the tabernacle in which the Blessed Sacrament is reserved shall be most diligently guarded. This is a grave obligation in conscience of the priest who has the custody of the church or oratory.

2. This Sacred Congregation, to which the preservation of the discipline of the seven Sacraments is entrusted (Canon 249), and which has already issued an Instruction on May 26, 1929 ("De quibusdam vitandis atque observandis in conficiendo Sacrificio Missæ et Ssmæ Eucharistiæ Sacramento distribuendo et asservando"),[1] considers it opportune to recall the canonical precepts to the minds of all on whom falls the truly serious duty of reserving the Most Holy Eucharist, and to decree other safeguards and means more adapted to our times whereby the Most Holy Eucharist may be preserved free from every insult.

[1] *Acta Ap. Sedis*, XXI, 631 sqq.

3. The faithful observance of certain Canons of the Code of Canon Law contributes greatly to the attainment of the desired noble end. Two precepts especially, imposed *sub gravi*, must be obeyed if the Most Holy Eucharist is to be reserved in the church: (1) some person must be present to be responsible for the Blessed Sacrament; (2) a priest shall celebrate Mass regularly in the sacred place at least once a week (Canon 1265, § 1). Even though on account of the scarcity of priests the Apostolic See may at times grant that the sacred mysteries be celebrated only once in two weeks for the renewal of the Sacred Species (the danger of corruption being always excluded), it never dispenses from—nay, it urgently insists on—the condition that there shall be always some person who is responsible for the custody of the Blessed Sacrament day and night.[2]

In addition, three things must be kept in view, as decreed in the above-mentioned Canon 1269: (1) the Most Holy Eucharist must be reserved in an immovable tabernacle (§ 1), solidly enclosed on all sides (§ 2); (b) the tabernacle must be so carefully guarded that all danger of sacrilegious profanation is removed (§ 2); (c) the key of the tabernacle is to be most diligently guarded by the priest (§ 4). In connection with these individual precepts some points must be emphasized.

4. (a) *The tabernacle must be immovable and solidly enclosed on all sides.*—From this precept, which is *per se grave*, the Ordinary cannot dispense, nor can even a centurial or immemorial custom excuse from its observance, except in the case considered in § 3, and then provided that the security of the Most Holy Eucharist is provided for equivalently. Absolute enclosure on all sides demands that the tabernacle be constructed of solid and sturdy material. It is indeed true that according to the liturgical laws the tabernacle may be constructed of wood or marble or metal,[3] which last material is stronger than the others; but it is more advisable that it be constructed of sturdier material, and that the single parts shall adhere closely together, that the lock shall be of the utmost strength and shall be firmly attached to the door, and that the hinges be firmly inserted in the tabernacle. In some places the bishops had prescribed that, for the greater security of the Blessed Sacrament, the tabernacle should be made of solid metal, and where such a precept is in force it must be absolutely observed, as Cardinal Gasparri teaches ("De Ssma Eucharistia," II, 263, n. 994). It would indeed be most commendable if the tabernacle were a real iron chest (commonly called a *coffre-*

[2] Cfr. S.R.C. resp. dici 17 Feb. 1881 ad Episcopum Aetonen. (Decr. n. 3527).

[3] *Cærimoniale parochorum iuxta novissimas A.S. sanctiones concinnatum*, art. *VII, De tabernaculo*, etc., n. 9, ad 4.

fort or safe), so that it could not be easily pierced or broken open by any of the means ordinarily employed by thieves, and if it were firmly attached by strong iron bolts to the lowest gradine of the altar or to the rear wall (of the altar). These iron safes should be constructed in the form of a ciborium which should then be covered with marble and decorated with other ornaments, so that the whole will present the appearance of the skilfully constructed work mentioned in paragraph 2 of Canon 1269; at least, they should be so constructed that they can be inserted into the already existing tabernacles. These tabernacles are called "safes" (*tabernacula de securitate*). To a petition as to whether the liturgical laws were observed in such tabernacles, addressed in the name of the Ordinaries of the Province of Milwaukee by a priest who exhibited for approval a new tabernacle most solidly constructed and in consonance with the Rubrics of the Roman Ritual and the Decrees of the Sacred Congregation of Rites, the same Sacred Congregation replied on April 1, 1908: "The response of the S.R.C. given in a similar case on March 18, 1898, is to be communicated to the priest petitioner: namely, the aim of the inventor is to be praised, but the matter in question concerns the local Ordinaries."

In another *dubium* (*Superionen.*) a Most Reverend Bishop, that he might more safely give his approval to a certain tabernacle, asked the Sacred Congregation of Rites: "Does a semi-circular door, which revolves on ball bearings without hinges, satisfy the liturgical laws, so that on this score nothing prevents the Ordinaries from commending such to the priests, or should the tabernacle be constructed with a door or gates attached to hinges around which they revolve?" After obtaining the vote of the Liturgical Commission, the Sacred Congregation decreed the following reply: "There is no obstacle in the case quoted; as to the rest, the Ordinary should be consulted."

The use of these solidly constructed ciboria lends an additional efficacious protection to the custody of the Blessed Sacrament. This Sacred Congregation does not indeed impose the burden of securing such tabernacles on churches which are provided with ordinary tabernacles, provided that these actually furnish satisfactory grounds for security. It does, however, recommend that the former be provided in all new churches; and it urgently commends the Most Reverend Bishops that, in their zeal for the Blessed Sacrament, they shall guard and see that the ordinary tabernacles in use in the churches of their dioceses shall also possess such a solidity as to avert every danger of sacrilegious profanation, and shall most sternly remove tabernacles which do not supply complete certainty of the absence of such danger.

5. (b) *The tabernacle shall be so carefully guarded that all danger of sacrilegious profanation is obviated.*—It does not suffice that there be a guard on the spot, nor is it enough that the tabernacle is so

strong that it cannot be perforated by an auger or chiselled apart, or that it is so strongly protected by bolts and locks that no false keys can open it. A third safeguard is required by law: *sedulous* custody. This vigilance, which must be exercised without intermission, comprises a great number of ordinary and extraordinary precautions demanded by the circumstances of time and place.

With regard to the custodian, although it is desirable that he be a cleric, and if at all possible a priest, the employment of a layman is not forbidden, *provided that a cleric is responsible for the key* of the place where the Holy Eucharist is reserved. The custodian must remain in the vicinity day and night, so that he may be immediately upon the spot if an emergency should arise, and may exercise unceasing vigilance. He shall never depart from the church during the time when it is open to the faithful but is more or less deserted, and this is all the more urgent in city churches where thieves, not recognizable to the faithful as such, may wander through the shrines in the guise of visitors or mendicants, watching intently for the moment when vigilance is relaxed and they can, as it were in a flash, perpetrate their sacrilegious thefts; or during the daytime they may carefully scrutinize the entrances, windows, gratings, and doors, especially the side-doors, so that at night they may put into execution their evil designs. While this happens more rarely in the smaller towns, where the presence of a stranger walking around and entering the church is more noticeable and awakens suspicion in priests and laity, this fact nevertheless does not relieve the pastor or rector of the church of the obligation to guard the Holy Eucharist in such manner as his prudence will suggest after consideration of the local circumstances—for example, by visiting the church several times during the day, by committing the custody during the day to persons of proven character living in the vicinity, and by instituting among the parishioners the custom of making private visits to the Blessed Sacrament at various hours of the day.

An attentive watch should also be kept over workers and other persons who, because of their employment or for other reasons, visit frequently the church, sacristy, or the adjacent house of the priest or custodian.

The sedulous custody of the Blessed Sacrament prescribed by law should not be remitted during the night time when the church is locked. Special precautions, indeed, such as prudence may require, should be taken for the nocturnal hours. The *ordinary* precautions, which are required both for the safe custody of the Holy Eucharist and to safeguard from theft the sacred vessels, pictures, alms and church furniture, are:

(1) in so far as necessity demands or it is possible, all the en-

trances to the church shall be protected by sturdy doors, fitted with strong bolts and bars which can be opened only from within the church by keys; the windows shall be protected by lattices or gratings;

(2) when the churches are being locked in the evening, a careful inspection shall be made to prevent any evil-minded person from concealing himself within;

(3) the duty of closing the church and the keys shall be entrusted to a person above all suspicion and of assured sobriety. To these precautions we wish to add another recommendation, which is being employed daily more extensively, and which, where employed, has repeatedly shown itself to be a useful aid in defeating the efforts of thieves: namely, the installation in suitable places of little bells which are rung by electricity whenever the doors are opened, or the doors, tabernacle, altar, mensa or candelabra are touched, thus arousing immediately the attention of the priest or custodian. There are also special electrical apparatus which suddenly light up the church, and immediately inform the custodian of the presence of a thief in the church. To accomplish their desired purpose, however, such apparatus must be skilfully and cleverly concealed so as to arouse no suspicion in the thieves, and they should be daily inspected to determine that they are in good working order.

Finally, the third paragraph of the above-mentioned Canon provides for a special extraordinary case: "For some grave reason approved by the Ordinary, it is not forbidden that the Most Holy Eucharist be reserved during the night outside the altar, but on a corporal, in some more secure and becoming place, the precept of Canon 1271 being observed." This place is usually the sacristy, provided that this is more secure and is becoming, or preference may be given to a very strong and well-enclosed safe inserted in some wall of the church. But if neither the church nor the sacristy affords the necessary security, the Holy Eucharist may be reserved in any other more secure place, even a private room. In such a case the pastor must take care that the Blessed Sacrament is reserved with due reverence and honor, and that the faith of the people in the real presence is not diminished. In reservation of this kind, the Sacred Species shall not touch the corporal, but shall be enclosed always in a vessel or pyx:[5] furthermore, whenever the Sacred Species are taken from or replaced in the tabernacle of the church, the priest must wear surplice and stole, and must be accompanied, at least generally, by a cleric carrying a light.

As a futher precaution against thefts the rectors of churches should also see that, in so far as possible, pyxes and other sacred vessels of great value shall not be left in the tabernacles, thereby inciting still further the cupidity and audacity of robbers. When such vessels are

[5] Cfr. the above-mentioned Decr. Altonen., not. 2.

used on the occasion of special solemnities, it is highly desirable that they be purified during the last Mass and deposited in a safe place, which should not be the sacristy; any particles that remain shall be transferred to the ordinary pyx. Let pastors likewise abstain from decorating the altars and holy statues or paintings (especially when these are exposed for public cult) with excessive votive offerings, such as gold and silver rings and chains, necklaces, earrings, pearls and the like; or if this should seem desirable on the occasion of some special feast, these offerings should be removed from the church on the conclusion of the ceremonies and the reason for their removal clearly explained to the faithful.

6. (c) *The key of the tabernacle shall be most diligently guarded by the priest.*—All the other precautions which we have enumerated will be futile if the chief precaution of all is neglected, namely, that the key of the tabernacle be carefully guarded. As stated in the fourth paragraph of Canon 1269, this guardianship is a grave obligation in conscience of the priest who is entrusted with the custody of the church. To satisfy the most diligent custody prescribed by the Canon, the rector of the church is strictly commanded never to leave the key of the tabernacle on the altar table or in the door of the tabernacle, not even during the morning period when the divine services are celebrated at the altar of the Blessed Sacrament and Holy Communion is distributed, especially if the altar is not in clear view. On the completion of the ceremonies, the key shall be kept by the rector either in his house or constantly on his person, all danger of loss being provided against; or it may be deposited in a safe and secret place in the sacristy, which place must be locked with another key. This other key must then be guarded by the rector in the manner specified above.[6]

Priests who have the custody of the Holy Eucharist should carefully consider the gravity of the obligation of guarding most diligently the key of the tabernacle—a gravity which both the purpose and the very wording of the law plainly reveal. The priest on whom the duty and task of guarding the key ordinarily and immediately devolve is the rector of the church or oratory: if he should depart, he may and should commit the custody to another priest during the period of his absence, and if he keeps the tabernacle key in the sacristy under another key, he may entrust this latter key to this guardian during his absence, and as long as the tabernacle key may be needed. Its universal adoption manifestly confirms this custom. In the case of a parish church, the key must be kept by the pastor; in the case of a cathedral or collegiate church, which is also a parish church, the duty of guarding the Holy Eucharist pertains to the Chapter, and a second key of the

[6] Cfr. Encycl. litt. iussu Benedicti XIV edit. a S. C. EE. et RR., die 9 Febr. 1751.

tabernacle should be kept by the pastor (Canon 415, § 3, n. 1). To the pastor belongs the exclusive right of retaining the key of the tabernacle, even though a confraternity is erected in the church. In non-parochial churches in which the Blessed Sacrament is reserved by Apostolic Indult, the key is to be kept by the chaplain or rector—never by a lay person, even though he be the patron. Without an Apostolic Indult, lay persons as such may not retain the key of the tabernacle.

7. Some special points must be mentioned regarding the guardianship of the tabernacle key in the churches of nuns or religious, and in pious and religious houses of women. In the first place, according to Canon 1267, in religious or pious institutes the Blessed Sacrament can be kept in the church or principal oratory only, and not within the choir or enclosure of nuns, all privileges to the contrary being revoked. Ordinaries, therefore, should keep this precept clearly in mind, and demand its strict execution, namely,[7] that the key of the tabernacle must not be kept within the enclosure. Consequently, in future the key must be kept in the sacristy, where it will be available whenever necessity demands; after the sacred functions of the church have been completed and especially during the night, it should be deposited in a safe, strong and secret place to be locked with two keys, of which one is to be kept by the Superioress of the community or by her substitute and the other by some nun (for example, the sacristan), so that the presence of both is required for the unlocking of the place where the key is kept. The Most Reverend Bishops should pay careful regard to this precept, and insist rigidly on its execution without any consideration whatsoever for persons, so as to obviate a tide of abuses and irreverences which otherwise may threaten the Blessed Sacrament.

8. With regard to the oratories of seminaries and ecclesiastical colleges, of institutes for the religious training and education of youth of either sex, of hospitals and other similar institutions, which enjoy the privilege of reserving the Blessed Sacrament, the tabernacle key is to be kept by the rector or moderator of such, if he is a priest; otherwise, by the spiritual director who is usually assigned for the celebration of Mass and the performance of sacred functions, and who must take careful precautions that the key does not come into the hands of others.

9. Finally, with regard to private oratories which enjoy by Apostolic Indult the faculty of reserving the Blessed Sacrament, the tabernacle key is usually kept in the sacristy in charge of the family rather than of the chaplain.[8] If, however, it seems advisable to the bishop that the key should not be given into the custody of the holder of the

[7] Cfr. S.R.C. resolutis diei 2 Maii 1878 ad VI (decretum n. 3448), Emus Card. Petrus Gasparri, *op. cit.*, 266, n. 998.

[8] Cardinal Gasparri, *op. cit.*, II, 267, n. 999.

Indult, he may commit it either to the priest who regularly celebrates the divine services there, or to the local pastor who will then (if this arrangement is convenient) deliver it on successive occasions to the priest who is to celebrate. Lay holders of Indults, who retain the custody of the key, should be reminded, and clerics of whatsoever dignity should carefully consider, that a truly grave duty is imposed on them of seeing that the key shall never come into the hands of any other person, even of their family or household.

10. This Sacred Congregation is well aware that the foregoing precautions will not attain fully the proposed aim, unless the Most Reverend Bishops and Ordinaries, besides assuring the observance of these precautions by pastors, rectors of churches, moderators of all kinds of institutes, and Superioresses of nuns, shall likewise keep before them these four precepts, about which we are greatly solicitous:

(*a*) During the course of their diocesan visitations especially, but also on other occasions as circumstances demand, they shall either in person or through suitable and prudent ecclesiastics inquire diligently and see for themselves what provision is made for the secure custody of the Holy Eucharist in both the individual parishes and in the churches and oratories (even private) which enjoy the right of reservation; and as often as they discover that all the requirements of law are not being observed, they shall command that these requirements be satisfied as quickly as possible, appointing a short interval for their fulfillment, under the penalty of a heavy fine and even of suspension *a divinis* in the case of a priest or from office, according to the gravity of the guilt of those to whom is committed the duty of providing every means of security. Nor shall they relieve from this obligation any persons on the plea, forsooth, that no profanation or untoward incident has previously occurred; for what has never hitherto taken place may well occur in the course of time and because of human malice, if the necessary precautions are neglected.

(*b*) If a sacrilegious theft in which the Holy Eucharist is violated (which may God avert!) should occur in his diocese from whatsoever cause, the Ordinary shall either in person (which is desirable) or through a specially delegated official of his curia always institute a process against the pastor or other priest, whether secular or regular (even exempt), responsible for the custody of the Blessed Sacrament, and shall transmit to this Sacred Congregation the acts of the process together with his recommendations, in which he shall describe especially the circumstances of the time and place of the theft, and then, having before his eyes the acts of the process, shall declare to whose fault or culpable negligence the commission of the crime is to be attributed, and shall propose canonical penalties to be inflicted on the guilty persons, and shall await the mandates of this tribunal.

(*c*) The Most Reverend Bishops shall give mature consideration to the severity of the penalties decreed by Canon 2382 against a pastor who shall gravely neglect the custody of the Holy Eucharist, which penalties of the violation may extend even to deprivation of a parish. In consideration of the aim of the law, let them see that corresponding penalties are inflicted likewise on the rectors of churches, *congrua congruis referendo*, who are gravely delinquent in their discharge of the arduous office entrusted to them, obtaining through this same Sacred Congregation, when the necessity arises, the requisite and proper faculties for this purpose. No grounds for the remission of the penalties are contained in the plea of the pastor or of others entrusted with the custody of the Holy Eucharist, that the tabernacle was left open or the key was not kept in a safe place through the carelessness of another priest. For on themselves devolved the diligent and careful custody of the sacred vessels and of the Holy Eucharist, and the personal duty of seeing that after divine services the tabernacle should not be exposed to any violation or sacrilege. Nay, both the priest concerned and any other guilty of such negligence should be punished with the same penalties, since through their fault they furnished the occasion for so heinous a crime. And in order that the Ordinaries may likewise prosecute with penalties delinquent religious of either sex, even exempt, in accordance with these Apostolic precepts in the matter in question, in virtue of this Instruction we commit to them the necessary faculties concurrently with the Major Superiors of such religious, upon whom this Sacred Congregation imposes the same obligation, reserving however to the Bishop alone the faculty of conducting the process mentioned above under (*b*).

(*d*) Let them diligently inquire whether the churches and oratories which are not entitled to reserve the Blessed Sacrament under the Common law (cfr. Canon 1265, § 1, nn. 1, 2), possess this faculty by Apostolic Indult granted in a *Breve in perpetuum* or by a rescript conceded for a time; as often as they discover that this privilege does not rest on a legitimate right, they shall abolish it as an abuse. Furthermore, let the Bishops not show themselves too complaisant in receiving and recommending petitions for the faculty of reserving the Blessed Sacrament in places which are not granted that faculty in the common law. Unless very grave reasons are present, let them abstain from accepting such petitions, especially in the case of private oratories and churches far removed from the houses of the faithful, in deserted mountains and on broad plains, where all those conditions are not at hand which are required for the faithful and most secure custody of the Sacred Species. It is even preferable that at times even a notable number of the faithful shall be deprived of the opportunity to adore the Holy Eucharist, rather than that the Blessed Sacrament be exposed to a probable danger

of profanation. Nay even, by this Letter the power is committed to the Bishops and local Ordinaries to revoke the faculty of reserving the Holy Eucharist from churches and oratories (even private) which enjoy the Apostolic privilege by Indult, as often as they detect the occurrence of grave abuses or the absence of any of the conditions which are necessary for the secure custody and the proper reverence and worship of the Blessed Sacrament.

Such are the canonical norms and more urgent precautions which the Sacred Congregation deems it expedient to impress on the local Ordinaries, so that they in turn may command their execution more earnestly on the pastors and other custodians of the Blessed Sacrament with a view to the extirpation of any abuses that have crept in, and the avoidance of such abuses elsewhere. Other precautions which because of the circumstances of time and place seem more opportune for industry of the Ordinaries themselves. We, therefore, beseech and implore these Ordinaries in the Lord that, aided by these precautions, they shall labor with all their strength for the effective protection of the Holy Eucharist and to defeat the machinations of wicked men against this Sacrament, "than which the Church of God holds nothing more worthy, nothing more holy and admirable, since in it is contained the chief and greatest gift of God—God Himself, the Fountain and Author of all grace and sanctity, Christ Our Lord." [9] To the Bishops, their priests and the faithful this Sacrament will indeed be the unfailing pledge of divine protection from above.

In an audience granted to the Secretary of this Sacred Congregation on May 7, 1938, His Holiness, Pope Pius XI confirmed and ratified by his Apostolic Authority the foregoing Instruction, which had been approved by Their Eminences in plenary session of March 30 of the same year. His Holiness ordered that the Instruction should be declared public law in the official Commentary, the *Acta Apostolicæ Sedis*, and should be most religiously observed by all Ordinaries of places and persons and by others to whom it specifically refers, *contrariis quibuscumque minime obstantibus.*

Issued at Rome by the Sacred Congregation for the Discipline of the Sacrament, on the Feast of the Ascension, 1938.

D. Cardinal Jorio, Prefect
F. Bracci, Secretary

[9] *Rit. Rom.*, tit. IV, cap. I, n. 1.

APPENDIX VII

CHANGES IN THE RUBRICS OF THE BREVIARY AND THE ROMAN MISSAL.

I. CHANGES IN THE RUBRICS OF THE BREVIARY

The rubrical changes made by the Holy See on August 1, 1938, do not affect any of the rules for the Divine Office and the Missal, but deal with the indulgences granted for certain prayers said before and after the Divine Office and Holy Mass.

(1) In the beginning of the *Ordinarium Divini Officii iuxta Ritum Romanum persolvendi* shall be put this rubric: "Cleries in sacred orders who recite the whole Office in presence of the Blessed Sacrament, at once or at different times of the day, gain a plenary indulgence under the usual conditions—Confession, Holy Communion, and prayer for the intention of the Holy Father (Pius XI, October 23, 1930).

"Those who recite only part of the Divine Office before the Blessed Sacrament gain an indulgence of five hundred days for each canonical hour (Pius XI, May 18, 1933).

"If the same cleries have got the obligation of the Divine Office changed into other prayers, they gain the plenary indulgence under the above conditions when they say those prayers in presence of the Blessed Sacrament (Pius XI, November 7, 1932)."

(2) The rubric in the *Ordinarium* placed before the prayer "Aperi Domine" is to be replaced by the following: "Before the Divine Office is begun, it is praiseworthy to say, always in the singular, the following oration, for the recitation of which the Supreme Pontiff Pope Pius XI granted an indulgence of three years, November 17, 1933."

(3) The rubric before the oration "Sacrosanctæ" is to be replaced by the following: "When the Divine Office is finished, one laudably says the following oration for which the Supreme Pontiff, Pope Pius XI, granted an indulgence of three years. Besides, to cleries in major orders and priests who devoutly recite that prayer after the Divine Office, the Supreme Pontiff, Pope Leo X, remitted the defects and faults committed through human frailty in the recitation of the Office.

That prayer is always to be said kneeling, even in the private recitation of the Office, except by those who because of infirmity or any more serious impediment cannot kneel."

II. CHANGES IN THE RUBRICS OF THE ROMAN MISSAL

The rubrics concerning the indulgences granted for the prayers that may be said at the convenience of the priest before the celebration of Holy Mass are to be changed as follows:

(1) Before the antiphon "Ne reminiscaris" this rubric is to be put: "Every priest, by concession of Pope Pius XI, October 3, 1936, can gain the following indulgences: an indulgence of five years if before the celebration of Holy Mass he recites Psalms lxxxiii, lxxxiv, lxxxv, cxv and cxxix, with the antiphon, versicles and *Oremus*; a plenary indulgence, if he recites them daily for a whole month. Sacramental Confession and prayer for the intention of the Holy Father are also required."

(2) After the inscription "Oratio S. Ambrosii Episcopi," and before the words "Die Dominica," is to be inserted the following rubric: "An indulgence of three years for each of the following orations of St. Ambrose, if the one assigned for the day is said (Pope Pius XI, October 3, 1936)."

(3) Before the other oration of St. Ambrose, "Ad mensam," the rubric is to be changed as follows: "An indulgence of three years (Pope Pius XI, October 3, 1936)."

(4) Before the oration of St. Thomas, "Omnipotens sempiterne Deus," the rubric shall be changed as follows: "An indulgence of three years; a plenary indulgence, provided the oration be recited daily for a whole month, and there be added sacramental Confession, a visit to some church or public oratory, and prayer for the intention of the Holy Father (Pope Pius XI, December 10, 1936)."

(5) Before the oration to the Blessed Virgin Mary, "O Mater pietatis," the rubric shall be changed as follows: "An indulgence of three years (Pope Pius XI, October 3, 1936)."

(6) Before the oration to St. Joseph, "O felicem virum," the rubric is to be changed as follows: "An indulgence of three years (Pope Pius XI, October 3, 1936)."

(7) Before the oration to all the Angels and Saints, "Angeli, Archangeli, etc.," the rubric is to be changed thus: "An indulgence of three years (Pope Pius XI, October 3, 1936)."

(8) Before the oration to the Saint in whose honor Holy Mass is celebrated, "O Sancte N.," the rubric shall read: "An indulgence of three years (Pope Pius XI, October 3, 1936)."

(9) At the declaration of intention before Holy Mass, "Ego volo,"

the following rubric is to be put: "An indulgence of five hundred days (Pope Pius XI, July 12, 1935)."

III. CHANGES IN THE RUBRICS OF THE PRAYERS AFTER HOLY MASS

(1) Before the antiphon, "Trium puerorum," the rubric shall be changed as follows: "Every priest can gain the following indulgences by concession of Pope Pius XI, October 3, 1936: an indulgence of five years if after Mass he recites the *Canticum trium puerorum* and Psalm cl with the antiphon, versicles, and *Oremus*; a plenary indulgence if he has said these prayers for a whole month, together with Confession and a prayer for the intention of the Supreme Pontiff."

(2) Before the oration of St. Thomas, "Gratias tibi ago," the following rubric is to be inserted: "An indulgence of three years; a plenary indulgence if the prayer is said daily for a whole month, with sacramental Confession, visit to a church or public oratory, and prayer for the intention of the Holy Father (Pope Pius XI, November 2, 1934)."

(3) Before the oration of St. Bonaventure, "Transfige," this rubric is to be inserted: "An indulgence of three years (Pope Pius XI, October 3, 1936)."

(4) Before the hymn of St. Thomas, "Adoro te devote," the rubric shall be changed as follows: "An indulgence of five years; a plenary indulgence under the usual conditions for reciting the same daily for a whole month (Pope Pius XI, March 12, 1936)."

(5) Before the aspirations, "Anima Christi," the rubric shall be changed in the following manner: "An indulgence of seven years if the priest devoutly recites these invocations after Mass; three hundreds days as often as they are said; a plenary indulgence under the usual conditions when one has daily recited those invocations for a whole month (Pope Pius XI, January 9, 1854)."

(6) At the oblation of oneself, "Suscipe, Domine," the rubric shall be changed as follows: "An indulgence of three years; a plenary indulgence under the usual conditions when one has for a whole month recited daily the act of oblation (Pope Pius XI, December 4, 1932)."

(7) Before the oration to Christ Crucified, "En ego," the rubric shall be changed as follows: "An indulgence of ten years; a plenary indulgence to those who recite it after Mass and pray for the intention of the Holy Father (Pope Pius XI, February 2, 1934)."

(8) At the oration, "Obsecro te," the rubric shall be changed to read: "An indulgence of three years (Pope Pius IX, December 11, 1846). Besides, to priests who recite the prayer on their knees, unless they cannot kneel, remission of the defects and mistakes made

through human frailty in the celebration of Holy Mass is granted (Pope Pius X, August 29, 1912)."

(9) At the prayer to the Blessed Virgin Mary, "O Maria, Virgo et Mater," the rubric is to be changed thus: "An indulgence of three years (Pope Pius XI, October 3, 1936)."

(10) Before the oration to St. Joseph, "Virginum custos," is to be placed the following rubric: "An indulgence of three years; a plenary indulgence under the usual conditions if one has said the prayer daily for a whole month (Pope Pius XI, May 18, 1936)."

(11) Before the prayer to the Saint in whose honor Holy Mass was said, beginning with "Sancte N.," the rubric is to be changed to read: "An indulgence of three years (Pope Pius XI, October 3, 1936)" (Sacred Congregation of Rites, August 1, 1938; *Acta Ap. Sedis*, XXX, 292–295).

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